



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC NO. 1230 OF 2014

PERFECT WORK (K) LIMITED.....PLAINTIFF

VERSUS

DAVID MURANI.....1ST DEFENDANT
LEONIDA BARAZA.....2ND DEFENDANT
RAHAB NJERI.....3RD DEFENDANT
PURITY MAKENA.....4TH DEFENDANT
EDWIN PONYOKO.....5TH DEFENDANT
VERGINIA MAINA.....6TH DEFENDANT
MWIHAKI WAHOME.....7TH DEFENDANT
PAUL MURUNGA.....8TH DEFENDANT
FRANCIS WANJIKU.....9TH DEFENDANT
STEPHEN OTIENO.....10TH DEFENDANT

RULING

Coming up for determination is a Preliminary Objection filed by the Defendants dated 26/9/2014 wherein the Defendants seek that the Plaintiff’s suit be struck out with punitive costs to them on the grounds that the court lacks jurisdiction to usurp power donated by the law to an inferior tribunal and entertain the suit. Secondly, that the suit is an abuse of the court process and thirdly, that the matter relates to issues of controlled tenancy that do not fall within the ambit of the court.

The objection was canvassed by way of written submissions. Agina & Associates Advocates for the Defendants filed submissions dated 13/10/2014 wherein counsel submitted that the court lacked jurisdiction to entertain this suit being a tenancy dispute between the parties. Counsel submitted that the

Defendants were controlled tenants within the meaning of the **Landlord and Tenants (Shops, Hotels and Catering Establishments) Act, Cap 301** and pursuant to Section **12(1) (b) of the Act**, the Business Premises Rent Tribunal (BPRT) has the jurisdiction to determine or vary rent payable in respect of the controlled tenancies.

Morara Ngisa & Company Advocates for the Plaintiff filed submissions dated 7/11/2014, wherein counsel submitted that the dispute between the parties are of a complex and hybrid nature and cannot therefore be entertained by the tribunal. It was counsel's submission that there was debt that accrued before the parties got into a landlord and tenant relationship and consequently, it would be a waste of judicial time for the Plaintiff to sieve through this claim and file multiple suits instead of filing one suit before this court.

It is argued by the Defendants that the dispute between the parties who are in a landlord – tenant relationship ought to be determined by the BPR Tribunal established under Cap 301. The Plaintiff holds a different opinion that the issues to be adjudicated in the suit are complex and therefore the tribunal may lack jurisdiction to conclusively adjudicate over the dispute.

I have read through the Plaintiff's application and perused the annexures thereto. It emerges that both parties were tenants of the building owned by LAPTRUST under a landlord trading as Limpo Systems Limited. The tenants would pay rent to Limpo Systems who in-turn would remit the rent to LAPTRUST. However, Limpo Systems failed to remit which resulted to a debt of Ksh. 872,000/-. Consequently, LAPTRUST levied distress for rent and declined to renew the lease with Limpo Systems. The Plaintiff was subsequently incorporated and LAPTRUST agreed to work with it on condition of settling the outstanding rent. It was thus agreed that in order to secure their business, all tenants would contribute towards the rent arrears. According to the Plaintiff, some of the tenants have complied save for the Defendants.

From the foregoing, it is very clear that the Defendants have been tenants even before the Plaintiff was incorporated. It is also clear that the rent arrears accumulated when the Defendants were still tenants. It is my view that sieving through the claim to file multiple suits for adjudication in different forums as stated by the Plaintiff would amount to splitting hairs unnecessarily whereas the Defendants have always been tenants.

This, I opine, is a matter that can be handled at the BPR Tribunal. Consequently, the suit herein is struck out with no order as to costs.

It is so ordered.

Dated, Signed and delivered this **24th** day of **February, 2015**

L.N. GACHERU

JUDGE

In the Presence of:-

None attendance for the Plaintiff/Respondent

Mr Ndirangu holding brief for Agina for the Defendants/Applicant

Kamau : Court Clerk

L.N. GACHERU

JUDGE

24.2.2015