



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 153 OF 2014**

**SHAMSHAD AHMED MOHAMMED YAKUB)**

**FARHAN MOHAMED YUSUF).....PLAINTIFFS**

**VERSUS**

**RASHID KALUMA OKEDI)**

**JOSEPH K. NDUNGU).....DEFENDANTS**

**J U D G M E N T**

**I N T R O D U C T I O N**

1. The Plaintiffs are joint owners of LR Kitale Municipality Block 6/39 which comprises a business premises (Premises). The Plaintiff leased the premises to the defendants who have been carrying on business in the premises for the last six years.

**P L A I N T I F F ' S C A S E**

2. On 1/7/2014 the first plaintiff caused the two defendants to be served with a notice to terminate the tenancy. The notices were dated 1/7/2014 and were all served on 1/7/2014.

**A N A L Y S I S O F E V I D E N C E A N D T H E L A W**

3. The notices to terminate tenancy were served pursuant to the provisions of the Landlord and Tenant (shops, Hotels and catering Establishments) Act Cap 301. The tenants were obliged to make a reference to the Tribunal established under the Act if they were opposed to the notice to terminate their tenancy. They did not file any reference. When they were served with summons in this case, they neither entered appearance nor filed defence. This suit therefore proceeded by way of formal proof.

4. The first plaintiff produced notice to terminate tenancy served upon the first defendant as exhibit 1(a). He also produced an affidavit of service on the same as exhibit 1(b). The first plaintiff too produced termination notice served upon the second defendant [exhibit 2(a)] and the affidavit of service [exhibit 2(b)]. The two notices took effect after two months from service that is on 1/9/2014. Under the provisions of the aforesaid Act the defendants tenancy terminated on 1/9/2014 and any continued stay of the two defendants after 1/9/2014 is illegal. I find that the defendants were properly served with termination notices. They have no justification in remaining on the premises after they failed to do what was required of them under the Act.

**D E T E R M I N A T I O N**

5. The Plaintiffs have proved their case against the defendants to the required standards. An order of eviction is hereby issued against the defendants, their agents, servants, employees/or any persons claiming through them from the premises known as Kitale Municipality Block 6/39. The plaintiffs shall have costs of this suit.

**Dated, signed and delivered at Kitale on this 15th day of April, 2015.**

**E. OBAGA**

**JUDGE**

**In the Presence of Mr Ingosi for Mr Onyancha for Plaintiff. Court Clerk – Kassachoon.**

**E. OBAGA**

**JUDGE**

**15/4/2015**