



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 12 OF 2014

UMRA LIMITED T/A MALINDI SUPERMARKET.....PLAINTIFF/APPLICANT

=VERSUS=

MOHAMED SWALEH HEMED.....1ST DEFENDANT/RESPONDENT

MURPHY MERCHANTS.....2ND DEFENDANT/RESPONDENT

R U L I N G

Introduction:

1. The Application before me is by the Plaintiff and it is dated 14th May 2014 and filed on the same day. The Plaintiff is seeking for the following orders:

(a) That pending the hearing and determination of the complaint and reference before the Business Premises Rent Tribunal in Case No. 94 of 2013, an injunction do issue directed against the 1st and 2nd Defendants, either by themselves, servants, agents, representatives and/or employees from executing the proclamation of attachment of sale dated 9th May 2014 as against the Plaintiff.

(b) THAT the officer commanding station (OCS) Malindi police station or any other person so directed to do so to ensure strict adherence of the order by the Defendants.

(c) THAT costs be provided for.

The Plaintiff's/Applicant's case:

2. According to the Affidavit of the Plaintiff's director, the Plaintiff has been running a supermarket along Lamu Road on portion number 1099 Malindi for many years having leased it from Noah Katana Ngala for Kshs.3,500 per month.

3. It is the Plaintiff's deposition that the tenancy is controlled as envisaged under the provisions of the Landlord and Tenant (Shops and Catering Establishment) Act.

4. The Plaintiff's director deponed that in early 2013, the 1st Defendant purported to be the actual Landlord and demanded from the Plaintiff Kshs.7,000 per month which at the time totaled Kshs.240,000.

5. The Plaintiff deposed that the 1st Defendant went further and instructed the 2nd Defendant to levy distress for rent described in the proclamation and warrant of attachment dated 2nd March 2013, which action necessitated the Plaintiff to file CMCC No. 49 of 2013. However, the Plaintiff settled the demanded amount.

6. In July 2013, the 2nd Defendant again proclaimed the Plaintiff's goods on purported rent arrears of Kshs.738,600 at a monthly rent of Kshs.100,000. This necessitated the Plaintiff to file a suit in the Business Premises Rent Tribunal vide BPRT Case No. 94 of 2013.

7. The Plaintiff now seeks for injunction pending the hearing of the dispute by the Tribunal.

The Respondent's case:

8. The 1st Respondent filed a Replying Affidavit and deposed that this matter is res sub judice because it is also a subject in Malindi CMCC No. 49 of 2013; that this matter is res judicata; that the Plaintiff has not fixed the matter in the tribunal for hearing and that the Plaintiff has refused to pay the current rent that is due and owing.

9. The parties' advocates filed their respective submissions which I have considered.

Analysis and findings:

10. It is not in dispute that the Plaintiff in this matter has filed in the Business Premises Rent Tribunal a dispute being Case Number 94 of 2013.

11. Indeed, according to the Reference before the Tribunal, the Plaintiff has alleged that the Defendant levied distress for rent in the month of March 2013 claiming rent arrear of Kshs.218,000 at Kshs.7,000 per month, which it later on paid.

12. The Plaintiff's claim in the Tribunal is that the abnormal increment of rent from 3,500 per month, then Kshs.7,000 and now Kshs.100,000 is in contravention of the provisions of Cap 301.

13. It is trite law that it is only the High Court/Environment and Land Court that can issue an order of injunction pending the hearing and determination of a matter filed before the Business Premises Rent Tribunal and not a subordinate court. The subordinate court does not have jurisdiction to grant injunction orders and therefore the pending case being Malindi CMCC NO. 49 of 2013 in which the Plaintiff was seeking for injunctive orders is null and void.

14. Having said so, and considering that the Defendant increased rent from Kshs 7,000 per month to Kshs.100,000, I am of the view that pending the determination of the payable monthly rent by the Business Premises Rent Tribunal, an injunctive order should issue with a view of maintaining the status quo. The action by the Defendants to levy distress for the contested rent will render the pending Reference nugatory unless this court issues injunctive orders.

15. Once the Tribunal determines the dispute, the Defendant can then levy distress for rent arrears that the Tribunal would have found to be payable by the Plaintiff.

16. For those reasons, I allow the Plaintiff's Application dated 14th May, 2014 as prayed.

Dated and delivered in Malindi this **21st** day of **November**, 2014.

O. A. Angote

Judge