



**Anupi Fashions Limited v Mwea Rice Mills Limited & 2 others (Environment & Land Case 17 of 2020) [2024] KEELC 6374 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6374 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 17 OF 2020  
LN MBUGUA, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**ANUPI FASHIONS LIMITED ..... PLAINTIFF**

**AND**

**MWEA RICE MILLS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MURAGE ESTATE AGENTS ..... 2<sup>ND</sup> DEFENDANT**

**JEREMIAH KIARIE MUCHEGU T/A ICON AUCTIONEERS . 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Plaintiff commenced this suit vide a plaint dated 27.1.2020 and amended on 23.6.2022 contending that the 1<sup>st</sup> defendant is the registered owner of parcel LR. No. 209/590 also known as Leader House (the suit premises). That from June 1997 to 24.1.2020, the plaintiff was a controlled tenant at Leader House, Shop A which was managed by the 2<sup>nd</sup> Defendant. That it complied with all obligations under the lease, until 1.10.2019 when the 2<sup>nd</sup> Defendant, under the 1<sup>st</sup> Defendant's instructions obtained a Landlord's Notice to terminate the tenancy on grounds that it wished to reconstruct the suit premises.
2. That upon service of the notice, the Plaintiff filed the case BPRT Case No.1047/2019: Anupi Fashions Limited v Mwea Rice Mills Ltd opposing the notice. However, on 24.1.2020, the Defendants went ahead to unlawfully distress for rent arrears of an alleged sum of ksh. 660,000/= without leave from the Business Rent Premises Tribunal. That no inventory was carried out by the 3<sup>rd</sup> Defendant thus, it is impossible to ascertain if any of its goods were stolen/damaged during removal. Further on 25.1.2020, the plaintiff was illegally and unlawfully evicted by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and as a consequence, it suffered losses.
3. The plaintiff therefore seeks the following orders;



- a. General damages for trespass, unlawful distress for rent, and unlawful eviction.
  - b. Aggravated damages.
  - c. Exemplary damages.
  - d. Special damages of ksh.1,108,227.80.
  - e. Interest on (a) (b) (c) and (d) above at court rates from 24.1.2020 until payment in full;
  - f. Costs and interest thereon at court rates from the date of judgment until payment in full.
4. The suit is opposed by the Defendants vide their joint statement of defence dated 20.8.2020 and amended on 20.7.2022. They deny allegations levelled against them in the plaint but admit that the landlord exercised its right to re-enter the premises and levy distress for rent arrears after the plaintiff ignored to pay new rent of ksh. 335,000/= per month with effect from 24.9.2019 but instead continued to pay the old rent of ksh. 53,038.
  5. The Defendants also state that the Plaintiff surrendered the premises back to the landlord upon the land lord's exercise of its right to re-entry on default of rent payment and that the proclaimed goods were all moved to the Plaintiff's warehouse in the presence of its representatives and as a result, no goods were stolen/damaged.
  6. They also contend that no leave was required from the BPRT before levying distress for rent against the Plaintiff.
  7. Both the plaintiff's and defence case commenced on 14.7.2023, with defence case extending to 18.9.2023, where each side called one witness. Finally on 4.7.2024, the matter was given a judgment date, that is 26.9.2024. However, after a careful analysis of the pleadings and the evidence tendered, the court shall deliver a ruling instead of a judgment for reasons to be given herein.
  8. There is no controversy that the plaintiff was a tenant in the premises of the 1<sup>st</sup> defendant of which the nature of the tenancy was a Controlled Tenancy. It appears that there was a fall out between the parties whereby the Land Lord purported to increase rent which the plaintiff resisted. Ultimately, the plaintiff was served with a notice of termination. In turn, the plaintiff filed the reference in the BPRT Case No. 1047 of 2019.
  9. The preamble of the *Landlord And Tenant (shops, Hotels And Catering Establishments) Act* describes the statute as;
 

“ An Act of Parliament to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto“
  10. In the Court of Appeal case of Dhirajlal J. Shah & another v Vijay Amritlal Shethia [2018] eKLR, the court while upholding the exercise of the superior courts' discretion to stay a matter awaiting the determination of the BPRT reference stated as follows:
 

“ Our construction of the title of this Act together with the content of the preamble (supra) is that, this Act deals specifically with the landlord and tenant relationships in relation to structures standing on the land. The mandate to resolve disputes arising from dealings in relation to such structures is exclusively vested in the BPRT in terms of section 12 of the Act”.



11. This is a situation whereby the plaintiff submitted himself to the jurisdiction of the BPRT and in his own words, the case is still pending. Thus upon activation of the applicable dispute resolution mechanism provided under Section 6 of the Act, the plaintiff ought to have waited for its determination. See - *Kingfisher Properties Limited v Nandlal Jivraj Shah & 2 others* [2013] eKLR and *Bahari (T) Company Limited v Alibhai Ramji Investment Limited (Civil Appeal 51 of 2020)* [2023] KECA 1284 (KLR) (27 October 2023) (Judgment) Neutral citation: [2023] KECA 1284 (KLR).
12. Even if the alleged eviction occurred after the filing of the BPRT case, the fundamental issue would still revolve around the validity of the termination notice, which in turn would attract such issues as to who was in breach of the tenancy relationship/contract. In the end, I find that it is premature to deliver a judgment at this stage. In the circumstances, the orders directing the delivery of the judgment are hereby set aside, the proceedings of 14.7.2023 are similarly set aside and the matter is stayed awaiting the determination of the BPRT case.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Shah for Plaintiff

Ongeri for Defendant

Court assistant: Joan

