**Caledonia Supermarket Ltd v Kenya National Examination Council**

**Division:** Court of Appeal of Kenya at Nairobi

**Date of judgment:** 22 December 2000

**Case Number:** 184/99

**Before:** Kwach, Shah and O’kubasu JJA

**Sourced by:** LawAfrica

**Summarised by:** W Amoko

*[1] Landlord and tenant – Protected tenant – Termination – Landlord threatens unlawfully to terminate*

*the tenancy – Whether the tenant can apply to the High Court for an injunctive relief.*

*[2] Landlord and tenant – Protected tenant – Termination – Manner in which a protected tenancy may*

*be properly terminated – Section 4 – The Landlord and Tenant (Shops, Hotels and Catering*

*Establishments) Act.*

**Editor’s Summary**

In 1998, the Kenya National Examination Council (“the Appellant”) acquired property on which several shops and flats had been constructed and Caledonia Supermarket Ltd (“the Respondent”) was a protected tenant occupying one of the shops on which it carried on the business of a supermarket. On 11 August

1998, the Appellant served upon the Respondent a notice to vacate the premises. The Respondent refused to comply with the said notice and commenced action before the High Court against the Appellant seeking orders restraining the Appellant from terminating the tenancy and damages. It also applied for an interlocutory injunction to issue pending the hearing and determination of the case. This application was heard and dismissed by Kuloba J who held that the Respondent had not made out a *prima facie* case with a probability of success and further ordered it to vacate the premises it occupied by 28 February 1999.

The Respondent appealed.

**Held** – The Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Chapter 201) was passed to protect tenants from eviction and exploitation and if an acquisition of the property was subject to tenancy, in order to terminate the tenancy the Appellant had to comply with section 4 of the Act.

Even if the Respondent had lost its status as a protected tenant, the Appellant was still obliged by law to issue a proper notice of termination under section 106 of the Law of Property Act which it had not done.

As it was faced with an illegal eviction and it had been served with an invalid notice depriving the

Business Premises Tribunal (which, in any case, did not have the power to grant injunctive relief) of jurisdiction, the Respondent had properly sought redress from the High Court. Dictum of Kwach JA in

*Tiwi Beach Hotel Ltd v Julian Ulrike Stamm* [1990] 2 KAR 189 followed.

As there was no evidence that the Appellant was a state corporation, its reliance on the proviso to section of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Chapter 201) was misplaced and had to be rejected.

On the material before him, the judge should have granted the injunction. However, as the

Respondent had already vacated the premises, it was not just to issue an injunction against the Appellant.

The Respondent’s tenancy was illegally terminated and it was entitled to recover damages for the loss and damage it had suffered.

Matter remitted back to the High Court for assessment of damages by any judge other than Kuloba J.

**Case referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Tiwi Beach Hotel Ltd v Stamn* [1990] 2 KAR 189 – **F**