



**T Gas Limited v Baluch & 3 others (Tribunal Case E017 of 2025)
[2025] KEBPRT 424 (KLR) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEBPRT 424 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E017 OF 2025
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
OCTOBER 8, 2025**

BETWEEN

T GAS LIMITED APPLICANT

AND

OLE SHERO BALUCH 1ST RESPONDENT

PETER MWANGI KIINIKI 2ND RESPONDENT

MUSTAFA HUSSEIN BALUCH 3RD RESPONDENT

MORAN AUCTIONEERS 4TH RESPONDENT

RULING

A. Dispute Background

1. The Tenant/Applicant, filed a Reference dated 29th May 2025 under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301, together with a Notice of Motion of even date. The Applicant sought orders restraining the Respondents from proclaiming, attaching, seizing, or interfering with its quiet possession of business premises situate on Land Parcel Kiambaa/Kanunga/2137, and further sought that police assistance be provided in enforcement.
2. The application is supported by the Supporting Affidavit of James Gicharu Karanga, the Managing Director of the Applicant Company, sworn on 29th May 2025. In response, the 2nd, 3rd and 4th Respondents filed a Replying Affidavit sworn by Hussein Ole Shero Baluch on 13th June 2025 and submissions dated 31st July 2025, opposing the application.
3. The Applicant avers that on 13th May 2022, it entered into a written Sub-Lease Agreement with the 1st Respondent, for occupation of part of the premises known as Kiambaa/Kanunga/2137 (Annexure JGK-1). The Applicant claims it has been in uninterrupted possession since then, running a garage and car wash, and has heavily invested in the premises evidenced by receipts annexed as JGK-3.



4. The Applicant contends it has at all times paid rent to the 1st Respondent, as demonstrated by rent receipts annexed as JGK-2. It states that on 10th March 2025, the 2nd and 3rd Respondents issued a demand letter to the 1st Respondent alleging arrears and instructed Moran Auctioneers to levy distress. On 9th May 2025, the 4th Respondent issued a proclamation attaching the Applicant's assets (Annexures JGK-4 and JGK-5).
5. The Applicant argues that the proclamation was illegal as it was not privy to the dispute between the landlords and the 1st Respondent. It fears irreparable harm, including closure of business, loss of clientele and reputational damage unless the Tribunal intervenes.
6. The 2nd and 3rd Respondents, as administrators of the estate of the late Agnes Wanjiru Waweru, annexed the Grant of Letters of Administration (H1) and the Certificate of Confirmation of Grant (H2) showing beneficial ownership of the suit property.
6. They aver that the 1st Respondent was their lawful tenant under a Lease Agreement dated 3rd May 2019 (H4) and an Addendum dated 4th July 2019 (H5) extending the tenancy for six years up to 4th October 2025. That the 1st Respondent defaulted in rent, accumulating arrears of KES. 1,333,585, prompting them to lawfully instruct Moran Auctioneers to levy distress.
7. The Respondents deny any knowledge of the Applicant and contend that there is no landlord–tenant relationship between them and T Gas Limited. They argue that the alleged sublease between the Applicant and the 1st Respondent was done without their consent, contrary to Section 3 of Cap 301 which prohibits subletting without landlord's authority.
8. They rely on the legal maxim *Ex turpi causa non oritur actio* (no cause of action arises from an illegal act), citing *Scott v Brown, Doering & McNab Company* (1892) 2 QB 724, and local authorities including *Friends Hotel Kakamega Limited v Commissioner of Domestic Taxes [2023] KETAT 942 (KLR)*, *Kenya Railways Corporation v Mamasu Enterprises Ltd & Others [2024] KEELC 13415*, and *Muthoni v Mwathi* (BPRT E006/2021) to argue that an illegal subtenancy cannot be protected.
9. They further cite *Farkhandas Nurmohamed Abdulkader V Mohamed Hasham Bakarani & Nasserpuria Memon Jamat [2014] KEHC 4269 (KLR)* and *Nairobi Housing Development Ltd v Highridge Corner Bar Ltd [1979] KEHC 38 (KLR)* to reinforce that a tenancy created without landlord consent is void and unenforceable.
10. In submissions, they emphasize that the Applicant has no locus standi, is a trespasser on the premises, and cannot use the Tribunal to shield itself from lawful distress aimed at the 1st Respondent.

B. Issues for Determination and Analysis

11. The following issues arise for determination;
 - a. Whether there exists a landlord–tenant relationship between the parties.
 - b. Whether the Applicant/Tenant is entitled to the injunctive orders sought in the application.
 - c. Who shall bear the costs of the application?

Issue (a) Whether there exists a Landlord–Tenant Relationship between the parties.

12. Section 2 of Cap 301 defines a landlord and a tenant as follows;

“landlord”, in relation to a tenancy, means the person for the time being entitled, as between himself and the tenant, to the rents and profits of the premises payable under the tenancy;



“tenant” in relation to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding, and includes a sub-tenant;

13. Section 3 of the Schedule in Cap 301 expressly prohibits a tenant from transferring, parting with possession of, or subletting premises without the consent of the landlord.
14. The Applicant admits that its interest arises from a Sub-Lease with the 1st Respondent. However, the 2nd and 3rd Respondents, being administrators and beneficial owners of the suit premises, have denied giving any such consent. The authorities cited, including *Muthoni v Mwathi* (BPRT E006 of 2021), confirm that in the absence of landlord consent, there is no valid landlord–tenant relationship enforceable under Cap 301.
15. We therefore find that the Applicant has no recognized tenancy with the landlords (2nd and 3rd Respondents) and is a stranger to the estate property.

Issue (b) Whether the Applicant/Tenant is entitled to the orders sought in the application

16. The injunctive relief sought is premised on the Applicant being a protected tenant. Since no valid tenancy exists between the Applicant and the landlords, the Applicant lacks the requisite legal standing to seek protection under Cap 301. The proclamation by Moran Auctioneers (4th Respondent) was directed against the 1st Respondent, the lawful tenant in arrears, and cannot be invalidated at the instance of a subtenant whose occupancy is illegal.
17. As held in *Farkhandas Nurmohamed Abdulkader v Mohamed Hasham Bakarani & Nasserpuria Memon Jamat* [2014] eKLR,

“A sub-tenancy created without the knowledge and consent of the landlord cannot be recognized or protected under the provisions of Cap 301. The protection afforded by the Act is only available to tenants who are lawfully in occupation under a tenancy sanctioned by the landlord.”
18. Similarly, in *Scott v Brown* (1892) 2 QB 724, the court declined to enforce rights arising from an illegality. Guided by these authorities, the Applicant is not entitled to the injunctive relief sought in the application dated 29th May 2025.

Issue (c) Who shall bear the Costs of the application?

19. Under Section 12(1)(k) of Cap. 301, Laws of Kenya, costs of any suit before this Tribunal are in its discretion but always follow the event unless for good reasons otherwise ordered. We shall order costs of the suit to the 2nd, 3rd, and 4th Respondents.

C. Orders

20. In conclusion, the following final orders commend to us; -
 - a. The Tribunal finds that there is no landlord–tenant relationship between the Applicant and the 2nd and 3rd Respondents.
 - b. The application dated 29th May 2025 is hereby dismissed.
 - c. All interim orders are hereby discharged
 - d. Costs of this application are awarded to the 2nd, 3rd, and 4th Respondents.



e. The reference dated 29th May 2025 is settled in the terms above.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF OCTOBER 2025

HON. JOYCE AKINYI OSODO (PANEL CHAIRPERSON)

HON GAKUHI CHEGE (PANEL MEMBER)

BUSINESS PREMISES RENT TRIBUNAL

In the presence of:

Ndungu for Tenant/Applicant

Dr. Wambui for 2nd, 3rd and 4th Respondents

No appearance for 1st Respondent

