



**Kabuku Investments Limited v Kap Enterprises Limited (Tribunal Case  
646 of 2017) [2023] KEBPRT 1291 (KLR) (3 August 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1291 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE 646 OF 2017  
CN MUGAMBI, CHAIR  
AUGUST 3, 2023**

**BETWEEN**

**KABUKU INVESTMENTS LIMITED ..... TENANT**

**AND**

**KAP ENTERPRISES LIMITED ..... LANDLORD**

**RULING**

1. The landlord's notice of motion dated 13.2.2023 seeks an order that the reference by the tenant in this matter dated 29.8.2017 be struck out. The grounds upon which the application is brought are that there has never been a landlord tenant relationship between the parties herein, the Respondent has never been in possession of the suit property, never paid any rent to the landlord and further that the suit property has been in possession of lower Kirinyaga road traders since January 2017 and they have been the tenants on the suit premises since then.
2. The tenants in their replying affidavit have deponed that the instant reference has been overtaken by events by dint of the Tribunal's determination in BPRT Case No. 9 of 2017, between the same parties and wherein the Tribunal has already delivered a judgment. The tenant further depones in its affidavit that it has already filed an appeal in the said matter.
3. The tenant has further confirmed in its affidavit that the instant matter was initially filed as BPRT Case No. 9 of 2017 and that both cases raise similar issues and that further, the tenants have already lodged their appeal against the judgment of the Tribunal in BPRT Case No. 9 of 2017, the instant reference has been overtaken by events.
4. I have perused the proceedings and the ruling in BPRT Case No. 9 of 2017. It is true that both cases raise similar issues and are between the same parties. In BPRT Case No. 9 of 2017, the tenants reference and all applications in the matter were dismissed for want of jurisdiction with costs to the Respondent/ Applicant herein.



5. In the circumstances, I allow the landlord's application dated 13.2.2023 and strike out the reference herein with costs to the Applicant/landlord.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3<sup>RD</sup> DAY OF AUGUST 2023.**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**8.2023**

**In the presence of;**

Ms. Wangari for the tenant/Respondent

Mr. Gode for the landlord/Applicant

