



**Amber Security Limited v Trance Towers Ltd (Tribunal Case
E312 of 2021) [2023] KEBPRT 1315 (KLR) (27 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1315 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E312 OF 2021
P MAY, MEMBER
NOVEMBER 27, 2023**

BETWEEN

AMBER SECURITY LIMITED TENANT

AND

TRANCE TOWERS LTD LANDLORD

RULING

1. The parties herein have engaged in protracted litigation. The Tribunal has determined the previous applications filed but before the ink could dry, the tenant filed a notice of motion dated 27th June, 2023. The tenant sought a plethora of orders in the application but principally an order to access their goods which had been locked in the demised premises.
2. The application is premised on the grounds set out in the supporting affidavit. The tenant accused the landlord of breaking into the demised premises unlawfully and taking his goods which included his tools of trade.
3. The application has been opposed by the landlord who reiterated as they had done before that the tenant was a habitual rent defaulter which had necessitated them to levy distress for rent. The landlord gave a chronology of the manner in which the distress was undertaken. The landlord also stated that the present proceedings amounted to *Res judicata* as the Tribunal had made a determination on a similar application
4. The parties were directed to canvass the application by way of written submissions. There has been compliance by the parties. I have considered the submissions, the affidavits and the annextures on record and wish to proceed as follows:
5. The landlord having challenged the present proceedings as being *res judicata* and the parties having submitted on the same, it is prudent that I make a determination as the same goes to the jurisdiction



of the Tribunal. I will make a brief outline of the legal framework and the prevailing jurisprudence on the doctrines of res judicata and jurisdiction.

6. *Res judicata* is a jurisdictional doctrine which is underpinned by Section 7 of the [Civil Procedure Act](#) which provides thus

“7. No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

7. The Court of Appeal in [John Florence Maritime Services Limited & Ano. v Cabinet Secretary for Transport and Infrastructure & 3 Others](#) (2015) eKLR cited with approval the following holding in *Henderson v Henderson* (1843) 67 ER 313 in relation to the tenor and import of the doctrine of res-judicata:

“.....where a given matter becomes the subject of litigation in any adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward, as part of the subject in contest, but which was not brought, only because they have from negligence, inadvertence or even accident, omitted part of their case. The plea of *Res judicata* applies, except in special cases not only to points upon which the court was actually required by parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties exercising reasonable diligence might have brought forward at the time.....”

8. The Court of Appeal summarized the rationale behind the doctrine of *Res judicata* in the following words;

“The rationale behind *Res judicata* is based on the public interest that there should be an end to litigation over the same matter. *Res judicata* ensures the economic use of the court’s limited resources and timely termination of cases. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law.”

9. I have perused through the application. The orders sought though not worded in the same manner as in the impugned application involve similar parties and transaction. The parties have also pointed out to the ongoing cases filed at the Magistrates courts and the subsequent appeal at the High Court. The issues raised in the present application can be ventilated best through those fora.
10. Having made the finding above, it is my considered view that the application is ripe for dismissal. The same is dismissed with no orders as to costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF NOVEMBER 2023.

HON. PATRICIA MAY



MEMBER

27.11.2023

Delivered in the presence of;

Mr. Chamwada for the landlord

No appearance for the tenant

