



**Waweru v Mwaura & another (Tribunal Case E1276 of 2023)  
[2024] KEBPRT 291 (KLR) (Civ) (22 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 291 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E1276 OF 2023  
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER  
MARCH 22, 2024**

**BETWEEN**

**STEPHEN MWANGI WAWERU ..... APPLICANT**

**AND**

**FRANCIS NJUGUNA MWAURA ..... 1<sup>ST</sup> RESPONDENT**

**BEALINE KENYA AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A. Dispute Background**

1. The tenant/applicant moved this tribunal vide a reference under Section 12 (4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 dated 19<sup>th</sup> December, 2023 with a complaint that the respondents have threatened to attach and sell the applicant's tools of trade including motor vehicles contrary to Cap 301 Laws of Kenya.
2. The tenant/applicant filed a Notice of Motion under a Certificate of Urgency dated 19<sup>th</sup> December, 2023 in which he sought the following orders; -
  - I. That the application be certified urgent.
  - II. That Bealine Kenya Auctioneers and or any other auctioneers be restrained from proclaiming, attaching and or selling the tenant's tools of trade pending the hearing and determination of this case.
  - III. That the respondents be ordered to allow the tenant unlimited access to the business premises without hindrances pending hearing and determination of the case.



- IV. That the landlord, its servants/agents be restrained from unlawfully intercepting/interfering in any manner whatsoever with the applicant's quiet occupation of the suit premises at Jogoo Road pending hearing and determination of this case.
- V. That the O.C.S Makongeni Police Station do assist in compliance with these orders.
- VI. That the costs of the application be provided for.
3. The application is supported by an affidavit of even date in which the tenant/applicant deposes as follows; -
- i. That the tenant has been running the business located at Jogoo Road.
  - ii. That the 1<sup>st</sup> respondent has instructed auctioneers/2<sup>nd</sup> respondent who has proclaimed the tenant's tools of trade with the intention to attach and sell them due to non-existent rent arrears. A copy of the proclamation letter is attached.
  - iii. That the respondents have inconvenienced, damaged the tenant's reputation, disfranchised his baggage clients and caused emotional suffering by issuing illegal threats, instructing auctioneers and threatening to evict him.
4. On 22<sup>nd</sup> December, 2023, the court issued temporary orders of injunction against the respondent pending hearing inter-partes.
5. The application is opposed vide a replying affidavit dated 22<sup>nd</sup> February, 2024 in which the landlord/1<sup>st</sup> respondent deposes as follows; -
- i. That on 28<sup>th</sup> June, 2022, the landlord filed a suit against his tenants including the applicant herein in BPRT Case No. E535 of 2022 to wit; Francis Njuguna Mwaura Versus Kevin Momanyi Onsinyo, Patrick Maina, Victor Kamengere Kimatu, Paul Mwangi And Amos Mugendi under a certificate of urgency. That on 23<sup>rd</sup> August, 2022, the court gave orders that the tenants continue paying rent. A copy of the order is annexed as "FNM1".
  - ii. That the aforesaid suit was instituted against the tenant herein pursuant to the tenancy agreement entered on 1<sup>st</sup> September, 2016 for a single container unit. A copy of the agreement is annexed as "FNM2".
  - iii. That the landlord wishes to clarify that the name of the applicant herein was captured under his alias name "Paul Mwangi" rather than "Stephen Mwangi". However, the same refer to one and the same person.
  - iv. That the applicant herein, who was duly served as clearly demonstrated by his mobile number in his pleadings 0725639097 and by the fact that he appointed the firm of Munyalo Muli & Co Advocates to represent him.
  - v. That on 23<sup>rd</sup> August, 2022, this court issued orders that all the tenants continue paying rent pending the hearing and determination of that suit, which the court emphasized on 11<sup>th</sup> November, 2022 and subsequently gave orders for police assistance on 11<sup>th</sup> November 2022 towards the proclamation after the tenants failed to comply with the orders of the court after several appearances.
  - vi. That the matter was heard and determined on merit by Hon. A. Muma on the 17<sup>th</sup> January, 2023 and a ruling delivered. A copy of the ruling and order is annexed as "FNM4".



- vii. That the applicant herein together with the other tenants filed 2 appeals through the firm of Munyao Muli & Co. Advocates in Milimani against the court's ruling dated 17<sup>th</sup> January, 2023 in CIVIL APEAL NO. E048 OF 2023 and ELC Case No. 2 of 2023. A copy of the order from the ELC Court and the memorandum of Appeal in the high court is annexed as "FNM5".
  - viii. That it is prudent to note that the ELC at Milimani in ELC Appeal No. 2 of 2023 directed the appellants to deposit KES. 480,000 each which they failed to do.
  - ix. That on 3<sup>rd</sup> July, 2023, the High Court before Hon Lady Justice Mbugua dismissed the appeals by the applicant herein together with the other tenants.
  - x. That on 18<sup>th</sup> December, 2023, the applicant herein in BPRT E535 of 2022 once more filed another application objecting to the execution but withdrew the said application on the 10<sup>th</sup> January, 2024 before Hon. A. Muma.
  - xi. That the current application is a sham as the tenant continues to benefit from the landlord's premises without paying the requisite rent as directed by the court severally.
  - xii. That the current application is already overtaken by events as this suit was already heard and determined in BPRT E535 of 2022 and the superior courts making this court functus officio.
6. The court directed that the matter be canvassed by way of written submissions on 27<sup>th</sup> February, 2024. The respondents complied by filing theirs dated 15<sup>th</sup> March, 2024 which we shall consider while dealing with the issues for determination.
7. The Tenant/applicant on the other hand filed a supplementary affidavit dated 15<sup>th</sup> March, 2024 in which he deposes as follows; -
- i. That the tenant did not sign any tenancy agreement as alluded to by the 1<sup>st</sup> respondent.
  - ii. That the area in which the tenant/applicant has been operating for over 5 years which the Nairobi City Council allowed him to use, is the space that borders the 1<sup>st</sup> respondent's premises. A copy of the authorization by Nairobi City County dated 17<sup>th</sup> July, 2018 is annexed as "SWM4".
  - iii. That the 1<sup>st</sup> respondent has never demanded for rent which is unusual in the case of a Landlord/tenant relationship.
  - iv. That the applicant only got wind of the 1<sup>st</sup> respondent's allegations of an alleged pre-existing landlord/tenant relationship when he received a message from the 2<sup>nd</sup> respondent which was proclamation for distress of rent some time in December, 2023.
  - v. That the applicant has never gone by the name of Paul Mwangi Kimani and the said person is unknown to him and that the applicant has never appointed the firm of Munyalo Muli and Co. advocates to represent him.
  - vi. That the matter (BPRT E535 of 2022) was heard on merit, and the same was addressed to the 1<sup>st</sup> respondent's tenants who are in the container premises.
  - vii. That the applicant operates under a tent and photos are annexed as "SMW2".
  - viii. That the applicant indeed instructed his advocate to file an application under a certificate of urgency dated 18<sup>th</sup> December, 2023 and the same was withdrawn on account of this suit.



- ix. That the applicant has never paid rent to the 1<sup>st</sup> respondent for him to imply existence of a Landlord/Tenant relationship

## **B. Issues for determination**

8. The following are the issues for determination; -
- Whether there exists a landlord/tenant relationship between the applicant and the 1<sup>st</sup> respondent herein.
  - Whether the tenant/applicant is entitled to the orders sought in the application dated 19<sup>th</sup> December, 2023.
  - Who shall bear the costs of the application?

### **Issue (a) Whether there exists a landlord/tenant relationship between the applicant and the 1<sup>st</sup> respondent herein.**

9. The Tribunal's jurisdiction is conferred by the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap. 301, Laws of Kenya in respect of controlled tenancies. We refer to the case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd.* [1989]: where it was stated;

"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given."

10. The tenant/applicant herein in his supplementary affidavit dated 15<sup>th</sup> march, 2024 swears in paragraph 4 that he did not sign any tenancy agreement as alluded to by the 1<sup>st</sup> respondent. The applicant also deposes in the same affidavit that he does not occupy the 1<sup>st</sup> respondent's premises but he occupies the frontal area facing the road and bordering the 1<sup>st</sup> respondent's premises where he has set up a tent and that the 1<sup>st</sup> respondent has never demanded rent, neither has the applicant ever paid rent to the 1<sup>st</sup> respondent herein.
11. We have seen and perused a written tenancy agreement annexed as "FNM2" allegedly between the 1<sup>st</sup> respondent's agent one Annastacia W. Mwangi and the applicant herein dated 1<sup>st</sup> September, 2016 for a container space. This tribunal cannot prove that the person named therein is indeed an agent of the 1<sup>st</sup> respondent and the applicant has denied signing any agreement with the 1<sup>st</sup> respondent.
12. The respondent herein has referred this court to previous cases filed which include BPRT Case NO. E535 of 2022 (Nairobi) and ELC at Milimani in ELC Appeal No. 2 of 2023, claiming that the matter was already heard and determined, and that the applicant herein was captured under his alias name "Paul Mwangi" rather than "Stephen Mwangi" who apparently refer to one and the same person,
13. The tenant/applicant has sworn in his supplementary affidavit that he has never gone by the name Paul Mwangi Kimani and that the said person is unknown to him and that he has never appointed the firm of Munyalo Muli and Co. advocates to represent him.
14. We have perused the previous cases filed by the respondents herein and we confirm that the applicant herein one Stephen Mwangi Waweru is not mentioned or listed as a party in the cases.



15. We therefore find that the previous cases are in no way related to the applicant herein as his name does not appear in any of the proceedings as a party therein.
16. The landlord/1<sup>st</sup> respondent in his submissions states that he has demonstrated through payment records annexed to his affidavits that the tenants in the previous cases had been paying rent to him and his agents. The landlord/1<sup>st</sup> respondent has however not attached any evidence of rent payment by the applicant herein to prove that there is indeed a landlord/tenant relationship.
17. Furthermore, the proclamation later dated 4<sup>th</sup> December, 2023 is addressed to the disputed name of Paul Mwangi Kimani and not in the name of the applicant herein who is one Stephen Mwangi Waweru.
18. Following the analysis above, we find and hold that there is no evidence of existence of a landlord/tenant relationship between the applicant and the 1<sup>st</sup> respondent herein, therefore, this tribunal therefore lacks jurisdiction to determine this matter.  
  
Issue (b) Whether the tenant/applicant is entitled to the orders sought in the application dated 19<sup>th</sup> December, 2023.
19. As analyzed above, this tribunal has found that there exists no evidence of a landlord/tenant relationship and therefore this tribunal is not able to grant the reliefs sought in this case. We therefore proceed to dismiss the case for want of jurisdiction.

**Issue (b) Who shall bear the costs of the application?**

20. 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 not order any costs to either party.

**C. Orders**

21. In conclusion, the following final orders commend to us-
  - a. The application and reference dated 19<sup>th</sup> December, 2023 are hereby dismissed for want of jurisdiction with no orders as to costs.
  - b. All interim orders are dischargedIt is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF MARCH 2024.**

**HON. JOYCE AKINYI OSODO**

**(PANEL CHAIRPERSON)**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON GAKUHI CHEGE**

**(PANEL MEMBER)**

**In the presence of:**

**Ms. Ngaruiya for the tenant/applicant**

**Mwenda for Landlord/respondent.**

