



Ali t/a Mega Wholesalers Ltd v Mohammed & others (Tribunal Case . E1227 of 2022 & E001 of 2023 (Consolidated)) [2023] KEBPRT 13 (KLR) (Civ) (27 January 2023) (Ruling)

Neutral citation: [2023] KEBPRT 13 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL**

TRIBUNAL CASE . E1227 OF 2022 & E001 OF 2023 (CONSOLIDATED)

A MUMA, VICE CHAIR

JANUARY 27, 2023

BETWEEN

ABDI MOHAMED ALI T/A MEGA WHOLESALERS LTD LANDLORD

AND

ZAHARA MOHAMMED & OTHERS TENANT

RULING

A. Background of the Dispute

1. The landlord moved this court on December 30, 2022 by way of notice of motion seeking orders of eviction as against the tenants herein which orders were granted considering he had filed notices of eviction dated July 25, 2022 to demolish and construct the premises and the same were served upon the tenants on the same day whom declined to sign the landlord wrote to the tribunal on December 23, 2022 confirming whether there were references filed and in a letter the tribunal confirmed no reference had been filed by any of the tenants. It is on the strength of this that the orders of eviction were granted.
2. Shortly after the tenants moved the tribunal under certificate of urgency dated January 2, 2023 in a new cause E001 of 2023 wherein they filed a reference dated January 2, 2022 in which reference they sought an injunction as against the landlord from interfering with their quiet possession which orders were granted on January 2, 2023.
3. Parties appeared before the tribunal on January 9, 2023 where in the tenants sought leave to come on record formally and to file a response in 14 days the said prayers were granted with a hearing date for January 27, 2023.
4. They on January 10, 2023 filed an application dated January 5, 2023 in E1227 of 2022 together with a notice of appointment also dated January 5, 2023 under certificate seeking a stay on the orders of eviction issued therein the orders sought were granted and hearing was retained for January 27, 2023.



5. The landlord moved the tribunal on January 13, 2023 seeking consolidation of the two files and vacation of the orders in E001 of 2023 and stay of the proceedings. The same were consolidate and parties given leave to file responses and submission on or before the January 27, 2023 this was done by both parties. The tenants filed a response by way of a replying affidavit of one Hussein Nuni and Bashir Farah and Muhyadin Raghe claiming lack of service of the initial notices and sought to cross examine the process server one Felix Omondi Owino.

B. Analysis and Orders

6. Both parties filed their submission I have had opportunity to look at the documents filed by all parties especially the responses and submissions and the main issue was whether there was valid service of the said notices of eviction by the landlord to the tenants whilst the same is raised in the replying affidavits no effort has been made to call evidence of the same and or cross examine the process server, in addition I find the filing of a reference to oppose the notices filed in E001/2023 an abuse of court process as they have been filed out of time without leave of this tribunal as required by cap 301. Ideally the tenants should have sought leave to extend time within which to oppose the notices and file references out of time this they did not, service appears to have been properly done I therefore dismiss the reference and application in E001/2023 for having been filed without leave of the tribunal. I find and confirm the orders in E1227/2022 as no basis has been placed before me to proof lack of service. The orders of December 30, 2022 shall continue to be operational and the OCS Eastleigh North Police Station to assist in compliance. No orders as to costs.

HON A MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A MUMA THIS 27TH OF JANUARY 2023. In The Presence Of Appollo For The Landlord And Lakicha For The Tenants.

HON A MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

