



**Nasry Consultants Limited v Okumu & another; Mutunga & another (Interested Parties)  
(Tribunal Case E722 of 2023) [2024] KEBPRT 324 (KLR) (Civ) (25 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 324 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E722 OF 2023  
A MUMA, CHAIR & J ROP, MEMBER  
MARCH 25, 2024**

**BETWEEN**

**NASRY CONSULTANTS LIMITED ..... APPLICANT**

**AND**

**GABRIEL OKUMU ..... 1<sup>ST</sup> RESPONDENT**

**HELLEN GITARO KIBE ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**BENSON MASILA MUTUNGA ..... INTERESTED PARTY**

**SABAHAT NAIM HAQ ..... INTERESTED PARTY**

**RULING**

**A. Parties And Representatives**

1. The applicant, Nasry Consultants Limited is the Landlord of the business premises located along Chamber Road in Ngara on plot L.R No. 209/1418/14 (the “Landlord”).
2. The firm of Abdinoor Jamal & Co. Advocates represents the Landlord in this matter.
3. The 1<sup>st</sup> Respondent, Gabriel Okumu, is a Tenant of the suit premises.
4. The 2<sup>nd</sup> Respondent, Hellen Kibe, is a Tenant of the suit premises.
5. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents appear in person in this matter and are collectively referred to as the Tenants.
6. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties are Applicants seeking to be admitted to the suit herein.



## **B. The Dispute Background**

7. The Landlord moved this Tribunal vide a Reference and an Application dated 24<sup>th</sup> July 2023 seeking orders certifying the matter as urgent, evicting the Respondents and the OCS Parklands Police Station to ensure compliance and enforcement of the order.
8. Having considered the Landlord's Application and in light of the non-responsiveness on the part of the Tenant despite having been properly served, this Honorable tribunal allowed the Landlords Application and granted leave to the Landlord to evict the Respondents vide an Order dated 10<sup>th</sup> August 2023.
9. Subsequently, Benson Masila Mutunga, the 1<sup>st</sup> Interested Party filed an Application dated 14<sup>th</sup> September 2023 seeking orders certifying the matter as urgent, staying and setting aside the Orders of the Court dated 10<sup>th</sup> August 2023 and admitting him as an interested party in this suit.
10. On 4<sup>th</sup> October 2023, Sabahat Naim Haq, the 2<sup>nd</sup> Interested Party filed an Application seeking orders certifying the matter as urgent and service be dispensed with, staying and setting aside the Orders of the Court dated 10<sup>th</sup> August 2023 and admitting him as an interested party in this suit.
11. The Court issued interim orders on 6<sup>th</sup> October 2023 admitting the 2<sup>nd</sup> Interested Party as a party to the suit and staying the Orders of the Court issued on 10<sup>th</sup> August 2023 pending the hearing and determination of the reference, following which the 2<sup>nd</sup> Interested Party filed a Preliminary Objection dated 5<sup>th</sup> February 2024.
12. It is the 2<sup>nd</sup> Interested Party's Notice of Preliminary Objection dated 5<sup>th</sup> February 2023 that is the subject of this ruling.

## **C. 2nd Interested Party's Case**

13. The 2<sup>nd</sup> Interested Party claims that this Tribunal lacks jurisdiction to hear and determine the Landlord's Application dated 24<sup>th</sup> July 2023 since there is no tenancy relationship between the Landlord and the Tenants.
14. Further, he claims that the issues in dispute is that of ownership of the suit premises and therefore, falls within the jurisdiction of the Environment and Land Court. He claims that the matter is sub judice in ELC No. E019 of 2023, where the Landlord is a party and where there are interim orders of the Court issued on 28<sup>th</sup> November 2023.

## **D. Landlord's Case**

15. The Landlord did not file any documents in response to the Preliminary Objection dated 5<sup>th</sup> February 2024 and instead chose to rely on the documents already on the Court's record.
16. The Landlord's Application is based on the grounds in the Supporting Affidavit of Hussein Abdullahi dated 24<sup>th</sup> July 2024, a Director of the Landlord who has been in charge of the Landlord's property portfolio since 2015.

## **E. Issues for Determination**

17. I have carefully perused all the pleadings and evidence presented before this Honorable Tribunal by the parties. It is therefore my respectful finding that the only issue that falls for determination is:  
Whether this Honorable Tribunal has the jurisdiction to hear and determine this matter;



## F. Analysis And Findings

18. It is trite law that jurisdiction is everything, without which a Court is devoid of power to hear and determine a matter. This Tribunal is guided by the decision in *Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Limited* [1989] eKLR where the Court of Appeal held as follows:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.
19. This Tribunal is further guided by the decision of the Supreme Court in *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR where the Court observed that:

“A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. ...”
20. I note that the 2<sup>nd</sup> Interested Party has adduced evidence before this Court demonstrating that there is a matter pending before the Environment Land Court in ELC Case No. E019 of 2023 in which the proprietorship of the suit property is in question, and where the Landlord herein is a party.
21. In that case, the Court issued a restraining Court Order dated 29<sup>th</sup> November 2023. I have perused the said Court Order as well as the Originating Summons and I note that the issue therein is entitlement to the suit property by adverse possession subject to Section 38 of the *Limitation of Actions Act* Cap 22.
22. Further, I note that the 2<sup>nd</sup> Interested Party produced a Power of attorney dated 28<sup>th</sup> September 2009 in which she was appointed by Abdul Majid Ahad to manage the suit property. The 2<sup>nd</sup> Interested Party also produced a Certificate of Postal Search dated 31<sup>st</sup> October 2023 which indicates the proprietor as Fazil Mohammed Dayied being the Administrator of the estate of Abdul Wajid Ahad who died on 31<sup>st</sup> July 2009.
23. The 1<sup>st</sup> Interested Party has also challenged the proprietorship of the suit property and has produced a letter of allotment dated 13<sup>th</sup> September 2023 in which the Nairobi City County granted the suit property to him under a lease for a term of 99 years.
24. In light of the above, the Tribunal notes that the issues before it for determination far exceed its jurisdiction as all parties in one way or another are linked to the ELC matter.
25. The basis upon which this Tribunal exercises its jurisdiction is the existence of a controlled tenancy in accordance with the provisions of the Landlord and tenant (Shops, Hotels and Catering Establishments) Cap 301 Laws of Kenya.
26. The Tribunal is also not in a position to determine the existence of a tenancy relationship, as the tenants did not respond to the Landlord’s Application despite being served with the Application and a mention notice dated 8<sup>th</sup> August 2023.
27. In the upshot, this Tribunal is devoid of jurisdiction to hear and determine this matter and must therefore down its tools.



## **G. Orders**

28. The 2<sup>nd</sup> Interested Party's Notice of Preliminary Objection dated 5<sup>th</sup> February 2023 is upheld in the following terms:

- a. The Landlord's Reference and Application dated 24<sup>th</sup> July 2023 is dismissed.
- b. Each party shall bear their own costs.

**HON. A MUMA**

**AG. CHAIR/MEMBER**

**HON JACKSON ROP**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 25<sup>TH</sup> DAY OF MARCH 2024 IN THE ABSENCE OF THE PARTIES.**

**HON. A MUMA**

**AG. CHAIR/MEMBER**

**HON JACKSON ROP**

**MEMBER**

