



**Kiatie & 13 others v Wahu & another (Tribunal Case E649 of 2023)  
[2024] KEBPRT 1565 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1565 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E649 OF 2023  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
NOVEMBER 5, 2024**

**BETWEEN**

**JOHN KIATIE & 13 OTHERS ..... APPLICANT**

**AND**

**MARY WAHU ..... 1<sup>ST</sup> RESPONDENT**

**MATUMBO COMPANY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This Ruling is on the Applicants/Tenants application dated 19<sup>th</sup> August 2024. The same seek for orders primarily to have the orders of this court made on the 7<sup>th</sup> August 2022 reversed. They want to continue depositing rent on the demised premises at this Tribunal instead of paying the same to the 1<sup>st</sup> Respondent pending hearing and determination of Nairobi COACA Application E414/2024.
2. The Applicants also fault the distress for rent being effected by M/S SANNEX enterprises Auctioneers dated 14<sup>th</sup> August 2024. The Applicants also grief about the appointment of M/S Ndoto Investments Ltd by the 1<sup>st</sup> Respondent for purposes of managing the demised premises on her behalf.
3. To the Applicants, payment of rents to the 1<sup>st</sup> Respondent would introduce serious challenge to them in the event that the 2<sup>nd</sup> Respondent succeeded in Nairobi COACAPPL E414/2024.
4. On her part, the 1<sup>st</sup> Landlady/Respondent in opposition to the said Application filed the Replying Affidavit sworn on the 27<sup>th</sup> August 2024 and grounds of opposition of even date. To her, the issues before the court are Res-judicata and this court is also functus officio and is without jurisdiction.
5. To the 1<sup>st</sup> Respondent, the matters in this suit are spent and she has entered into fresh contractual relationships with all the Applicants herein.



6. The Applicants filed the submissions dated 15/10/2024 and a list of authorities of the even date. On her part the 1<sup>st</sup> Respondent opted to rely on the replying affidavit and grounds of opposition aforesaid.
7. We have perused the pleadings on record and are of the view that this matter will either rise or fall on us answering the question whether this court has the jurisdiction to superintend over the matters now before it.
8. The simple answer to that question is that by the new tenancy agreements entered into between the Applicants and the 1<sup>st</sup> respondent, their past relationships and attendant orders or directions thereof were obliterated and/or extinguished.
9. The parties voluntarily decided to get into fresh contractual obligations which are not the subject matter before this court. There is no assertion by the Applicants that they executed the respective tenancy agreement under duress, coercion or at all. In as far as the Tenants executed the same, they were conscious of the subsistence of this matter before this court.
10. We really cannot understand the motivation by the Applicants to file this Application. They already committed to pay rent to the 1<sup>st</sup> Respondent/Landlords or by her directions and they cannot be seen to grieve over their own commitments in a binding contractual disposition.
11. Indeed there is no issue arising before us on the tenancy Agreements dated 27<sup>th</sup> August 2024. In any event, such arising issues if at all would call for adjudication in another suit and not the present proceedings.
12. We also observe that the applicants have neither challenged the orders of 7<sup>th</sup> August 2024 by way of appeal and have also not sought to stay the same through Nairobi COACA E414/2024. Of most concern to us is that the 2<sup>nd</sup> Respondent who would be the main beneficiary of the grant of the orders herein is moot. To us this is either by design or he has the Applicants to vouch for its interest which leaks of legal absurdity in view of their tenancy agreements with the 1<sup>st</sup> Respondent dated 27<sup>th</sup> August 2024.
13. We are therefore of the view that there is nothing in the Application dated 19<sup>th</sup> August 2024 that is rife for determination by us as envisioned in the landlord and Tenant (Shops, Hotels and Catering Establishments Act (Cap.301). We therefore proceed to dismiss the application in its entirety.
14. On costs, it is our view that the 1<sup>st</sup> Respondent is the successful party in these proceedings. She also responded to the Application dated 19<sup>th</sup> August 2024 and filed a Replying Affidavit and grounds of opposition both dated 27<sup>th</sup> August 2024. We therefore in compliance with Section 27 of the [Civil Procedure Act](#) and the proviso thereof award for the costs of this Application.
15. In conclusion, the orders that commend to us are the following:
  - i. That the Application dated 19<sup>th</sup> August, 2024 is dismissed.
  - ii. That the Applicants shall pay costs to the 1<sup>st</sup> landlady/Respondent assessed at Kshs.50,000/- to be shared equally among themselves.

Those are the orders of the court.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5<sup>TH</sup> DAY OF NOVEMBER 2024.**

**HON. NDEGWA WAHOME MBS - PANEL CHAIRPERSON**

**HON. JOYCE MURIGI - MEMBER**



## **BUSINESS PREMISES RENT TRIBUNAL BPRT**

Ruling delivered in the presence of Mr. Njugi for the 1<sup>st</sup> Respondent Landlady and Mr. Otieno for the Tenant/Applicant.

