



**Mwaura v Onsinyo & 4 others (Tribunal Case E535 of 2022)  
[2023] KEBPRT 649 (KLR) (24 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 649 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E535 OF 2022  
A MUMA, AG. CHAIR  
OCTOBER 24, 2023**

**BETWEEN**

**FRANCIS NJUGUNA MWAURA ..... LANDLORD**

**AND**

**KEVIN MOMANYI ONSINYO ..... 1<sup>ST</sup> TENANT**

**PATRICK MAINA ..... 2<sup>ND</sup> TENANT**

**VICTORIA KAMENGERE KIMATU ..... 3<sup>RD</sup> TENANT**

**PAUL MWANGI KIMANI ..... 4<sup>TH</sup> TENANT**

**ANTHONY MUGENDI ..... 5<sup>TH</sup> TENANT**

**RULING**

**Parties And Their Representatives**

1. The Landlord has let out the business premises at the property known as L.R. No. 209/6829 (PART) Makongeni Estate, Nairobi (hereinafter referred to as “the premises”).
2. The Firm of M/S Kiaritha & Associates appears for the Landlord.
3. The 5<sup>th</sup> Tenant/Applicant (hereinafter referred to as “the tenant”) has rented out one the premises situate at the property.
4. The Firm of M/S Mathi and Company Advocates appears for the Tenant.

**Dispute Background**

5. The Tenant approached this Tribunal vide a Notice of Motion dated 8<sup>th</sup> February 2022 wherein he was aggrieved by the Ruling and Orders of this Tribunal on the dispute between the Landlord and the Tenants.



6. The Tenant alleges that he has never been served with any documents and further that he did not participate in the proceedings of BPRT Case NO. E535 of 2022.
7. Thereafter, the Landlord filed a Replying Affidavit dated 20<sup>th</sup> March 2023 wherein he stated that the Tenant's application was an afterthought that was designed to frustrate the enforcement of the orders and that the Tribunal issued vide the Ruling delivered on 17<sup>th</sup> January 2023.

### **The Tenant's Case**

8. The Tenant claims that this Tribunal has condemned him to pay rent arrears without giving him an opportunity to be heard.
9. Further, the Tenant asserts that he has a credible defence against the Landlord's claims and that it is in the interests of justice that the orders issued by this Tribunal be set aside.

### **The Landlord's Case**

10. The Landlord's case is that the Tenant was represented by the firm of M/S Munyao Muli & Company Advocates.
11. The Landlord disputes the Tenant's allegations that he was not heard during the proceedings of this matter and maintains that the Tenant was well aware of the proceedings.
12. Further, the Landlord states that the Tenant is one of the Appellants in the appeal from this Tribunal's ruling serialized as HCCA No. E048 of 2023 and therefore his application is overtaken by events.

### **Issues For Determination**

13. From the background and the parties' respective cases provided hereinabove, this Tribunal finds the following issues for determination:
  - i. Whether this matter is *res judicata*?
  - ii. Whether the application is merited?

### **Analysis And Determination**

#### **Whether this matter is *res judicata*?**

14. I have given full consideration to the Application and the Response thereto. It is trite law that once a matter has been heard and determined on merit by a court of competent jurisdiction, the matter is rendered *res judicata* which is a Latin term for "already determined".
15. The [\*Black's law Dictionary\*](#) 10th Edition defines "*res judicata*" as:

"An issue that has been definitely settled by judicial decision...the three essentials are (1) an earlier decision on the issue, (2) a final Judgment on the merits and (3) the involvement of same parties, or parties in privity with the original parties."
16. In the same breadth, section 7 of the [\*Civil Procedure Act\*](#) Cap 21 provides as follows:

"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.”

17. In [Kennedy Mokua Ongiri v John Nyasende Mosioma & Florence Nyamoita Nyasende](#) [2022] eKLR the Court held that thus:

“ A Decision of the court must be respected as fundamental to any civilized and just judicial system. Judicial determinations must be final, binding and conclusive. There is injustice if a party is required to litigate afresh matters which have already been determined by the court.

A Decision of the court, unless set aside or quashed in a manner provided for by the law, must be accepted as incontrovertibly correct. These principles would be ‘substantially undermined’ if the Court were to revisit them every time a party is dissatisfied with an Order and goes back to the same Court particularly when there is a change of a Judicial Officer in the Court station”

18. This Tribunal is a subordinate court of under Article 169 of the [Constitution of Kenya](#) 2010 and is established under the [Landlord and Tenants \(Shops, Hotels and Catering Establishments Act](#) Cap 301. As such enjoys all the powers placed upon courts by any statute.

19. Furthermore, it has been clearly demonstrated that the Tenant has already preferred an appeal against the Ruling of this Tribunal in HCCA No. E048 of 2023.

20. The present matter is therefore *res judicata* and is wrongly before this Tribunal. The Tribunal became functus officio once it delivered a Ruling on merit.

21. The doctrine of *functus officio* was described by the Court of Appeal in [Telkom Kenya limited v John Ochanda \(suing on his own behalf and on behalf of 996 former employees of Telkom Kenya limited\)](#) [2014] eKLR as follows:

“ *Functus officio* is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon”

22. I see no need to expound on this. This Tribunal cannot purport to re-open an already determined matter. The mechanism provided by law for the Tenant is to make an application for review of the Ruling and Orders dated 17<sup>th</sup> January 2023 or pursue an appeal at the appropriate forum. Accordingly, the Tenants have jointly preferred an appeal.

23. Given my sentiments above, I will restrain myself from discussing the second issue as the fate of the Tenant’s application is now clear. A discussion on the same will be a mere academic exercise.

#### **Determination**

24. In the upshot, it is my considered view that the application by the Tenant is devoid of merit and is therefore dismissed with no award as to costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 24<sup>TH</sup> DAY OF OCTOBER, 2023. NO APPEARANCE FOR BOTH THE 5<sup>TH</sup> TENANT AND THE LANDLORD.**

**HON A. MUMA**

**AG CHAIR/MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

