



**Mwangi & 3 others v Kiprono & 3 others (Tribunal Case E175 of 2023)
[2024] KEBPRT 523 (KLR) (Civ) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 523 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E175 OF 2023
CN MUGAMBI, CHAIR
MARCH 20, 2024**

BETWEEN

**JOHN MWANGI 1ST APPLICANT
ISAAC KINUTHIA 2ND APPLICANT
MARY JIMMY 3RD APPLICANT
MICHAEL RUTO 4TH APPLICANT**

AND

**SUSAN KIPRONO 1ST RESPONDENT
ISABELA KIPRONO 2ND RESPONDENT
CATHERINE KIPRONO 3RD RESPONDENT
TANGO AUCTIONEERS 4TH RESPONDENT**

RULING

1. The Tenants Application dated September 22, 2023 seeks orders that pending the hearing and determination of the Reference, the court be pleased to issue an order of temporary injunction restraining the Respondents from in any manner whatsoever interfering with the Applicants business premises. The Applicants have also sought the assistance of the OCS Kaptembwo police station in enforcing the terms of the orders sought. Costs of the Application have also been prayed for.



The Tenants' depositions

2. The Tenants have sworn their affidavit through Mr. James Mwangi Karanja who has deponed that the Tenants carry out their business in an open space in Nakuru Block 4 behind the premises owned by the Respondents.
3. The said James Mwangi Karanja has also deponed that there has been filed a suit touching the suit premises in which suit the Applicants contend that the suit land/premises belong to the Government.
4. The Tenants further depone that there are no rent arrears and the interference and forceful eviction from their business premises is illegal.

The Respondents depositions

5. The Respondents through Ms. Susan Kiprono have sworn an affidavit in reply wherein it has been deponed that the tenants had a similar Application filed in BPRT Case No. E168/2022 consolidated with Case No. E105/2022 and a Ruling thereon was delivered on July 26, 2023.
6. The Respondents have further deponed that the Ruling delivered involved same parties, same facts, same stories narrated by the tenants and same prayers sought and hence this matter is *res judicata*.
7. It is further deponed that the proclamation was only done after the Tribunal delivered its Ruling in the aforesaid consolidated cases.
8. The Respondents also depone that ELC (Nakuru) Case No. 003 of 2023 was dismissed with costs on February 8, 2023 and the Application attached by the Applicants was filed by different parties not involved in these proceedings.
9. It is also deponed that no orders have been issued restraining the Respondents from collecting rent from the Applicants as they have always done.

Analysis and determination

10. The issues that arise for determination in this Application are in my view, the following:-
 - a. Whether this suit is *res judicata*
BPRT Case No. E168/2022 as consolidated with BPRT Case No. E105/2022.
 - b. Whether the Tenants are entitled to the orders sought in their Application.
 - c. What orders ought to be made in disposing of the Application and the Complaint

Issue A: Whether this suit is *res judicata*

BPRT Case No. E168/2022 as consolidated with BPRT Case No. E105/2022

11. On January 13, 2023, BPRT Case No. 168 of 2022 was consolidated with Case Numbers E105 of 2022 and E168 of 2022 and all files ordered to be placed before court No. 1 (Hon. Mugambi). The parties in this instant case and in the consolidated cases are the same save that Justus Mutinda appears only in Case No. E105/2022. The Applicants in the instant case, i.e John Mwangi, Isaac Kinuthia, Mary Jimmy and Michael Ruto are all parties in the other suits against the Respondents herein.
12. I note that the issues raised in the previous suits are similar to the ones raised in the instant suit and the instant suit was filed after the court had already delivered the Ruling in the consolidated suits on 26.7.2023.



13. In the said Ruling, the court disposed of the consolidated suits by issuing the following orders;-
- a. That the tenancy between the parties herein is ordered terminated with effect from August 1, 2022.
 - b. That the Tenants will render vacant possession of the suit premises within the next thirty days failing which the Applicants will be at liberty to evict the Tenants forcefully.
 - c. That the Applicants are granted leave to levy distress for rent against the Respondents for the recovery of the outstanding rent arrears.
 - d. That the Respondents will bear the losses of the suit assessed at Kshs. 50,000/=.
14. It is also instructive to note that the Applicants in this case were all Respondents in the above Ruling and they participated fully in the proceedings giving rise to the above Ruling.
15. Is this case therefore res judicata BPRT Case Numbers E105/2022 and E168/2022?

Section 7 of the [Civil Procedure Act](#) 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 or 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.”

16. The issues raised in this suit have been substantially and directly in issue in the consolidated suits and the said issues have already been finally heard and determined by the Tribunal in the Ruling already set out above. In the circumstances, this suit is Res judicata and it is not open for the Tribunal to try the same.

Issue B: Whether the Tenants are entitled to the orders sought in their Application

17. The court's Ruling of July 26, 2023 terminated the tenancy between the Applicants and the Respondents effective August 1, 2022 and the court further ordered the Tenants to vacate the premises and pay the outstanding rent at the pain of eviction.
- The Tenants who are now clearly no longer Tenants of the Respondents are not entitled to any orders against the Respondents.
18. The institution of this suit after the court had already delivered its Ruling on July 26, 2023 is also clearly an abuse of the court process.

Issue C: What orders ought to be made in disposing of the Application and the Complaint

19. In disposing of this matter, I have no hesitation in dismissing the Tenants' Application dated September 22, 2023 with costs to the Respondents.
- Further, having already found that this suit is *Res judicata*, the Reference herein is also dismissed with costs to the Respondents.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

3.2024



**RULING DELIVERED BY HON. NDEGWA WAHOME & HON. JOYCE MWANGI THIS 22ND
DAY OF MARCH, 2024 IN THE ABSENCE OF THE PARTIES.**

HON. NDEGWA WAHOME

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

HON. JOYCE WAHOME

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

