



**Kingori v Shariff (Tribunal Case E017 of 2024)**  
**[2024] KEBPRT 1364 (KLR) (12 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1364 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**TRIBUNAL CASE E017 OF 2024**  
**P MAY, MEMBER**  
**SEPTEMBER 12, 2024**

**BETWEEN**

**DOMINIC NTONGAI KINGORI ..... LANDLORD**

**AND**

**ABUBAKAR SHARIFF ..... TENANT**

**RULING**

1. The landlord approached the Tribunal by filing the reference under section 12(4) of Cap 301 dated 3<sup>rd</sup> May, 2024. It is the landlord's complaint that the rent for the demised premises had been increased but the tenant had failed to adhere to the new rates. Apprehensive that the tenant was in the process of vacating the demised premises, the landlord filed a notice of motion under certificate seeking for leave to levy distress. The application forms the subject of this ruling.
2. The application is premised on the grounds set out on the face of it and the further grounds contained in the supporting affidavit of the landlord. The landlord averred that the rent payable had been increased from Kshs. 10,000 to Kshs. 18,000 in the year 2019 and that the tenant had not opposed the said notice to increase rent. According to the landlord, the tenant had however failed to honour the increment and their attempts to challenge the said notice had been dismissed thus there was no lawful justification for the refusal to pay the increased rent amounts. The rent arrears had therefore accumulated to the tune of Kshs. 432,000/-.
3. The application was opposed through the detailed replying affidavit sworn by the tenant dated 17<sup>th</sup> May, 2024. The tenant admitted to the existence and the orders issued previously by the Tribunal in BPRT case No. 18 of 2020 but was quick to state that they were not bound by the said orders as they had not participated in the proceedings therein. In order to buttress this assertion, the tenant referred to the finding by the Meru Chief Magistrates Court in Meru Misc. Civil Application *No. E050 of 2022*, which copy of the ruling was annexed. The tenant was adamant therefore that the decision by the Tribunal allowing for the increment in rent was not binding on them.



4. The tenant stated that the outcome of the ruling in the above referenced decision was challenged unsuccessfully by the landlord who filed a separate application being the Meru CM Misc. Civil Application E040 of 2023. The tenant therefore accused the landlord for approaching the Tribunal with unclean hands. It was his averment that the landlord was seeking to unjustly enrich themselves through the present proceedings. Finally, the tenant pointed out that the landlord's advocate was the chairman of the Honourable Tribunal hence there was a glaring case of conflict of interests and misconduct.
5. The parties elected to canvass the application by way of written submissions. There has been compliance by both parties. I have perused through the submissions on record and the parties largely reiterated the positions set out in their various affidavits.
6. The present proceedings are peculiar as can be discerned from the checkered litigation history. The determination of the dispute calls for Solomonian wisdom and sound application of the relevant law. At the onset, it is prudent to set out the jurisdiction of the Tribunal.
7. The Tribunal is established by dint of the provisions of Section 11 of CAP 301 with the mandate to adjudicate on landlord-tenant matters covering shops, hotels and catering services. The Tribunal is thus part of the subordinate courts pursuant to Article 169 of the Constitution of Kenya.
8. Article 169 of the Constitution provides as follows –  
Subordinate courts.
  1. The subordinate courts are—
    - a. the Magistrates courts;
    - b. the Kadhis' courts;
    - c. the Courts Martial; and
    - d. any other court or local tribunal as may be established by an Act of Parliament, other than the courts established as required by Article 162 (2).
9. The Constitution is clear that local tribunals are subordinate courts by virtue of Article 169(1)(d). The decisions of the Tribunal therefore have the same strength as those from the subordinate courts. Parties aggrieved by the decisions from the Tribunal can only prefer appeals to the superior courts in particular the Environment and Land Court and not the Magistrates Court. This is the position under Section 15 of CAP 301.
10. Section 15 of the Act provides as follows:  
Appeal to court;
  1. Any party to a Reference aggrieved by any determination or order of a Tribunal made therein may, within thirty days after the date of such determination or order, appeal to the Environment and Land Court:  
  
Provided that the Environment and Land Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.



2. In hearing appeals under subsection (1) of this section the Court shall have all the powers conferred on a Tribunal by or under this Act, in addition to any other powers conferred on it by or under any written law.
11. Flowing from the above, it is clear that in determining the present dispute the Tribunal may be forced to review its earlier decision and equally sit as an appellate court over the decisions of the Magistrate Court. This is a dicey position which calls for utmost caution. The Tribunal is alive to its duty to protect the sanctity of the judicial process and prevent against any sacrilege of the same. The Tribunal is also cognizant of the legal principle that litigation must come to an end. The decisions of the Tribunal should in situations where pandemonium exist, avert situations where they open the proverbial can of worms.
12. Appreciating the peculiar circumstances set above and by dint of the powers granted to the Tribunal under Section 12(4), the Tribunal will at this point down its tools and advise the parties to refer the dispute to the relevant superior court for determination. There will be no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**HON. PATRICIA MAY**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

