



Mathenge v Baraka (Tribunal Case E045 of 2022)
[2023] KEBPRT 1216 (KLR) (16 June 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1216 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E045 OF 2022
CN MUGAMBI, CHAIR
JUNE 16, 2023

BETWEEN

LUCY WANGUI MATHENGE TENANT

AND

YUSUF RAJAB BARAKA LANDLORD

RULING

1. The landlord's notice of preliminary objection dated February 21, 2023 is brought on the grounds:-
 - a. That the issues raised in this suit and application are outside the jurisdiction of the Tribunal.
 - b. That the Applicant lacks capacity to institute the suit and therefore the suit is incompetent at the point of inception.
 - c. That the suit lacks legal sufficiency of pleadings.
 - d. That the orders issued in this matter have been issued fraudulently by concealment of material facts.
 - e. That the "defendant" lacks locus standi to defend these proceedings.
 - f. That the "defendant" having not taken out letters of administration is a stranger to these proceedings.
 - g. That the suit is bad in law and an abuse of the process of the court.
 - h. That the suit is void *ab initio* by reason of non-compliance with the law.
2. The Respondent's notice of preliminary objection has raised so many points that in my view, give it issues of mixed fact and law.



3. The first issue I have to determine is whether the notice of preliminary objection by the Respondent amounts strictly to a preliminary objection as by law defined.
4. It is not possible to determine the issue of jurisdiction in this matter without considering the evidence on record by way of affidavits. I have noted from the Respondent's own letters that he is the one who has issued "notices to vacate" to the Applicant. The Respondent's affidavit sworn on November 4, 2022 at paragraph 4 states as follows:-

"That I have approached the tenant several times for purposes of clearing my rent arrears of Kshs. 67,500/= but the tenant has refused or declined to pay the same."
5. The tenant is on the suit property pursuant to a lease agreement orally entered into between himself and the father of the Respondent. The Respondent has not denied that the tenant is currently in occupation of the premises. I will in these circumstances, leave the issue of jurisdiction to be determined after I have examined several factual situations for example: whether or not the Respondent has taken out letters of administration to the estate of his deceased father; whether or not the Respondent is the landlord of the suit premises as defined under the Act, Cap 301 of the Laws of Kenya; who has been demanding and receiving rent from the tenant amongst others.
6. Whether or not the orders herein have been issued fraudulently and by concealment of material facts is also an issue of fact to be established. The Tribunal will have to consider facts to establish fraud and further evidence to establish the concealment of material facts. The preliminary objection of itself cannot establish these facts and this ground cannot therefore be the basis of a preliminary objection.
7. The other grounds raised in the Respondent's preliminary objection are so generalized and unsubstantiated, they cannot pass for preliminary objection as legally defined.
8. Preliminary objections cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion [see the case of *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696].
9. In the circumstances, I find no merits in the notice of preliminary objection dated February 21, 2023, the same is dismissed with no orders as to costs.

RULING DATED, SIGNED AND DELIVERED THIS 16TH DAY OF JUNE 2023

HON. CYPRIAN MUGAMBI

CHAIRPERSON

16.6.20223

