



**Nyawira v Karuri & another (Tribunal Case E488 of 2024)
[2024] KEBPRT 1208 (KLR) (20 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1208 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E488 OF 2024
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
AUGUST 20, 2024**

BETWEEN

EVANGELINE NYAWIRA TENANT

AND

TERESA WANGARI KARURI 1ST LANDLORD

MARTIN GITHENYA KARURI 2ND LANDLORD

RULING

1. The instant case was instituted by way of a Reference dated 23rd April 2024 pursuant to Section 12(4) of Cap. 301, Laws of Kenya through which the Applicant complained that the Respondents had disconnected power supply to the suit premises and issued her with illegal notices contrary to Cap 301, Laws of Kenya.
2. The tenant simultaneously filed a motion of even date under certificate of urgency seeking inter-alia for an order to restore electricity power supply and restrain the landlords from harassing, increasing rent, threatening to evict and/or interfering with her quiet use and lawful enjoyment of the suit premises.
3. In response to the suit, the Respondents filed a replying affidavit sworn by the 2nd Respondent on 23rd May 2024 together with a notice of preliminary objection of even date on the following grounds;
 - a. That the application dated 23rd April 2024 is incurably defective as the application is not anchored on any suit (see Order 3 Rule (i), (ii) of the Civil Procedure Rules) and the case law (Wanja & *Another V Roothaert (Miscellaneous Application E193 of 2021)* (2022) KEHC 10255 (KLR) (3 June 2022) (Ruling).
 - b. The honorable court lacks jurisdiction to entertain the matter as the issues raised therein specifically prayer 2 is pending determination in Milimani Commercial Court ELC Cause No. E300 of 2022, Martin Githenya Karuri vs Evangeline Nyawira.



- c. That the application is incompetent, bad in law and an abuse of the court process.
4. The test of what constitutes a Preliminary objection was settled in the locus classicus case of Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors (1969) EA 696 wherein it was stated as follows:

“---a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case, Sir Charles Newbold, P. stated:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

5. Similarly, in the case of Oraro Vs Mbaja (2005) eKLR, Justice J.B Ojwang (as he then was) observed as follows on the same issue;

“I think the principle is abundantly clear. A “preliminary objection”, correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed.”

6. Based on the materials on record, it is clear that what is sought to be disposed of by way of a preliminary objection are not pure points of law which can be determined without interrogating the facts presented by both parties before concluding that this Tribunal has no jurisdiction to hear and determine the matter. In the premises, the landlords’ preliminary objection dated 23rd May 2024 is a candidate for striking out.

7. In conclusion, the following orders commend to us in this matter;

- a. The landlords’ notice of preliminary objection dated 24th May 2024 is hereby declined with costs in the cause.
- b. The matter shall proceed to hearing and determination on merit.

It is so ordered.

RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 20TH DAY OF AUGUST 2024.

HON. GAKUHI CHEGE - PANEL CHAIRPERSON

HON. JOYCE OSODO - PANEL MEMBER

In the Presence of;

Kariuki for the landlord



Njagi for the Tenant

