



**Dirie & Sons Company Limited v Bura Ranch (D.A) Company Limited
(Tribunal Case 35 of 2021) [2024] KEBPRT 397 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 397 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 35 OF 2021
A MUMA, AG. CHAIR & J ROP, MEMBER
APRIL 12, 2024**

BETWEEN

DIRIE & SONS COMPANY LIMITED APPLICANT

AND

BURA RANCH (D.A) COMPANY LIMITED RESPONDENT

RULING

A. Parties and Representatives

1. The Applicant, Dirie & Sons Company Limited as the Tenant herein (“the Tenant”) rented space on the suit property Plot No. 14205 Taita/Taveta (“the suit property”).
2. The firm of Garane & Somane Advocates represents the Tenant in this matter.
3. The Respondent, Bura Ranch (D.A) Company Limited, is the Landlord and owner of the suit property who rented out the suit property to the Tenant (“the Landlord”).
4. The firm of Otieno B.N & Associates Advocates represents the Landlord in this matter.

B. The Dispute Background

5. This Honourable Tribunal delivered a Ruling on 11th April 2023 dismissing Tenant’s Reference and Application dated 14th September 2021 thereby validating Landlord’s termination notice dated 26th November 2020 as effective. Consequently, Tenant was ordered to hand over vacant possession to the Landlord on or before 30th May 2023.
6. Subsequently, the Tenant filed an Application under a Certificate of Urgency dated 12th June 2023 seeking to review the Court’s Ruling and the consequent orders.



7. On 19th June 2023, the Tribunal certified Tenant's Application for review as urgent and directed that the matter be placed in chambers for further directions on 26th June 2023. Parties did not enter appearance and the matter was rescheduled. On 21st September 2023, the Tribunal directed parties to file and serve their written submissions.
8. During the mention on 17th January 2024, the Tribunal directed the file to be placed before the court which delivered the Ruling which is the subject of review. On 4th March 2024, the matter was set for ruling on 11th April 2024.

C. Jurisdiction

9. The jurisdiction of this Honourable Tribunal is not disputed by the parties.

D. Tenant's Claim

10. The Tenant claims that there are errors and mistakes apparent on the Ruling as the Honourable Tribunal wrongly determined the Tenant's Reference instead of the its application for restraining orders.
11. To buttress their claim, the Tenant avers that the consequent orders granted by the Tribunal are extremely prejudicial to the Tenant since they were absent during the delivery of the said Ruling thus condemned unheard.
12. The Tenant prays for the Honourable Tribunal to set aside, review, vary and or discharge the aforementioned ruling and the orders thereunder.

E. Landlord's Claim

13. The Landlord has filed its written submissions in opposition to the Tenant's Application dated 12th June 2023.
14. The Landlord avers that the Tenant has failed to satisfy the grounds provided in law to warrant for review of the Ruling and the consequent orders. Additionally, the Landlord avers that the Tenant has not shown any specific loss they substantially stand to suffer in favour of their prayer for grant of orders for stay.

F. Issues for Determination

15. Upon considering the application and submissions filed by both parties, I find that the only issues distilled for determination to be:
 - i. Whether the Tenant is entitled to the Constitutional Right to Fair Hearing under Article 50; and
 - ii. Whether the Tenant has made out a good case to justify the grant of orders for review.

G. Analysis and Findings

Whether the Tenant is entitled to the Constitutional Right to a Fair Hearing under Article 50

16. The Right to a fair trial is espoused under Article 50 (1) of *the Constitution* which provides that:



1. Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.
17. Accordingly, the Right to a fair trial is a well-protected right under the Constitution 2010 which cannot be limited by any other provision of the Constitution as the supreme law.
18. Thus, Article 25 of the Constitution on fundamental rights and freedoms which may not be limited provides as follows: -

Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited —
 - (b)
 - (c) the right to a fair trial.
19. In enforcing the right to be heard, the Court in Wachira Karani V Bildad Wachira [2016] eKLR stated: -

“...it would be unjust and indeed a miscarriage of justice to deny a party who has expressed the desire to be heard the opportunity of prosecuting his case.”
20. Further, Article 159 of the Constitution in determining the scope of exercising judicial authority, it provides as follows:
 2. In exercising judicial authority, the courts and tribunals shall be guided by the following principles—
 - (c) ...
 - (d) justice shall be administered without undue regard to procedural technicalities.
21. Following from the foregoing, it is clear that the Tenant is the judicial authority which is incumbent upon this Honourable Tribunal shall not be restricted by technical rules on whether the procedure was properly observed or not.
22. In light of the above, the Tribunal is of the view that the Tenant has a right to a fair hearing which shall remain unfettered by procedural rules as a mere technicality thus the Tenant is entitled to an equal opportunity to defend its case.
23. It is true that in the earlier proceedings the Tribunal indeed only heard the application and having concluded the same the notice to evict came into operation I see no prejudice in re opening the case to hear the Tenant on the merits of the reference.
24. Section 80 grants the Tribunal authority to review its ruling or orders, Order 45 sets out the scope of exercising its powers for review which is hinged on: (i) discovery of new and important matters or evidence; (ii) mistake or error apparent on the face of the record; and (iii) any other sufficient reason.
25. In this instant case, the ground I find most advanced by the Tenant is that there was an error apparent on the face of the record as the ruling which was delivered by this Honourable Tribunal was not subject of the Tenant’s Application, therefore, the orders granted therein were not among the prayers sought. The Tenant also submits the error as self-evident that there was no pre-trial and hearing as hinged under the rules.



26. In defining what constitutes “mistake or error apparent”, the court in *Paul Mwaniki v National Hospital Insurance Fund Board of Management* [2020] eKLR defines as:

“.... A review lies only for patent error where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face...an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the Act.

27. From the above, it is evident that procedural technicalities do not constitute an error apparent on the record since its detection requires scrutiny of the procedure and detailed examination of the proceedings. Additionally, the orders alleged to have been erroneous as they were not prayed for by either party does not constitute an error which stares on the face as its discovery would require elaborate argument and long process of reasoning to arrive to the orders given.

28. However, the Tenant submits that they have a constitutional right to a fair hearing which remains unfettered as underpinned in *the Constitution* under Article 25. Thus, I am clear in my mind that the reason provided by the Tenant qualifies to be ‘sufficient reason’ as defined in *Omote & another v Ogotu* (Civil Appeal E005 of 2021) [2022] KEHC 16441 (KLR) that:

“Of sufficient reason: ‘Any other sufficient reason need not be analogous with the other grounds set out in the rule because such restriction would be a clog on the unfettered right given to the court by section 80 of the *civil procedure act*: and that the other grounds set out in the rule did not in themselves form a genus or class of things which the third general head could be said to be analogous”

29. In view of the above, I find that the Tenant’s Application for grant of orders for review is merited in law.

H. Orders

30. In the upshot, the Tenant’s Application dated 12th June 2023 is hereby allowed in the following terms:
- That the Reference dated 14th September 2021 is set down for a full hearing on 8 and 9 July 2024 in Mombasa;
 - Parties to file documents together with witness statements within 21 days each; and
 - Costs in Cause

HON. A MUMA - AG. CHAIR/MEMBER

HON JACKSON ROP - MEMBER

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RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 12TH DAY OF APRIL 2024 IN PRESENCE OF ONDUSO FOR THE LANDLORD AND IBRAHIM FOR THE TENANT.

HON. A MUMA - AG. CHAIR/MEMBER

HON JACKSON ROP - MEMBER

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