



**Mwelu & another v Matheka & another; Kimithi & 3 others (Interested Parties) (Tribunal Case 327 of 2021) [2023] KEBPRT 23 (KLR) (Civ) (27 January 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 23 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE 327 OF 2021  
A MUMA, VICE CHAIR  
JANUARY 27, 2023**

**BETWEEN**

**JUDY MWELU ..... 1<sup>ST</sup> APPLICANT**

**SYLVESTER KARISSA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**PETER MATHEKA ..... 1<sup>ST</sup> RESPONDENT**

**LAZARUS MATHEKA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**LUCIA NDULULU KIMITHI ..... INTERESTED PARTY**

**NZIVO MUIA KIMITHI ..... INTERESTED PARTY**

**STELLAMARIS MBITHE ..... INTERESTED PARTY**

**MICHAEL KASIO ..... INTERESTED PARTY**

**JUDGMENT**

**A. Parties and their Description**

1. The 1<sup>st</sup> & 2<sup>nd</sup> applicants/tenants rented shop space in the suit premises. They are unrepresented.
2. The 1<sup>st</sup> and 2<sup>nd</sup> respondents are the proprietors of the rental landlords of the suit premises. They are represented by the firm of Advocates of Musyoka & Mutinda Company Advocates.
3. The interested parties are the alleged beneficiaries of the suit premises. They are not represented.



## **B. Background of the Dispute**

4. The tenants on April 7, 2021 moved this honourable tribunal *vide* a reference and notice of motion, evenly dated, April 7, 2021. They sought *inter alia* orders:
  - a. That the application be certified as urgent and service thereof be dispense with in the first instance.
  - b. That the landlord allows the tenant to continue her business without interruption.
  - c. That the landlord be restrained from unlawfully increasing monthly rent from KShs 10,000.00 to KShs 20,000.00 until the matter and determined by the Tribunal.

The Tribunal through an order dated April 15, 2021 granted prayers 1,3,4,5 & 6, which orders, among others, certified the application as urgent; restrained the landlord from increasing the rent to KShs 20,000.00 and prohibited the landlord from harassing or evicting the tenants.

5. On July 25, 2022, the interested parties through a notice of motion dated July 25, 2022 seeking among others orders:
  - a. That the honourable tribunal be pleased to join the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> & 4<sup>th</sup> interested parties in the suit.
  - b. That the monthly rent payable be the Tenant be deposited in the tribunal until the succession is done and grant issued.

On July 27, 2022, while dealing with the said application, this tribunal issued directions which allowed the applicants to be joined as the interested parties.

## **C. Tenants' Case**

6. The tenants deposed that they have been paying a monthly rent of KShs 10,000.00 per month.
7. They averred that the landlords without a justifiable reason intend to evict them from the suit premises with an intent of enriching themselves by leasing it out at a higher monthly rent.
8. It is their case that they have heavily invested in their business operated in the suit premises, as such, the upshot of the forceful would be an irreparable loss and damage.

## **D. Landlords' Case**

9. From the outset, the landlords averred that the Application, which culminates into the instant suit is an utter abuse of the court process, irregular and a waste of this Tribunal's time.
10. They deposed that, contrary to the allegations by the tenants, that the Landlords intended to forcefully evict them, the correct position is that they issued the tenants with a notice to vacate the suit premises.
11. It is their case that they singly and only intended to rightfully initiate the procedure for vacation of a premises by the tenant as prescribed for by the enabling law.



### **E. 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Interested Parties Case**

12. The 1<sup>st</sup> interested party deponed that the 1<sup>st</sup> respondent is her brother and that has no capacity to claim any rent from the suit premises or ownership because the property did not belong to him. Further, that the succession had not been done, neither had he been appointed by the family as the estates' administrator.
13. They further averred that the 3<sup>rd</sup> & 4<sup>th</sup> interested parties are the rightful owner of the suit premises rented out to the 1<sup>st</sup> & 2<sup>nd</sup> tenant.

### **F. Submissions**

14. Parties agreed that the matter proceed and be dispensed with vide the evidence and issues as presented and canvassed in their various affidavits. Thus, no submissions were filed by either party.

### **G. Analysis & Determination**

15. Before me for determination are two key applications. Both applications raise fundamental but different issues precursing me to first establish that this tribunal has requisite authority to hear and determine them.
16. I have had the occasion to peruse through all the pleadings and evidence presented to this Tribunal by the parties.
17. In respect of the first application by the tenants, there is no contention as to the suitability of the Tribunal to ventilate the matter to rest.
18. I am reluctant to be swayed by the interested parties that issues with a significant touch of Succession should be tolerated and be ventilated in this Tribunal. While one of their prayers is that the rent be payable to the Tribunal, which is an issue within the peremptory powers of this Tribunal, the whole mark, and import of it all, relates to the contention by them that succession has not been done, neither has the family duly appointed the 1<sup>st</sup> & 2<sup>nd</sup> landlords as the administrators of the estate, which the suit premises forms part of.
19. In fact, the 1<sup>st</sup> & 2<sup>nd</sup> landlords have adduced a copy of the letters for confirmation of the grant issued by the High Court (hon P Nyamweya). The legitimacy of this grant has not been challenged by any party. Even so, if there was a need to, approaching this Tribunal would not have been the proper channel.
20. Section 12, [cap 301](#) provides for the powers of this Tribunal, it is very clear that the application can only be to the extent of determination of issues relating to landlord and tenant, and not the rightful owner of premises.
21. Simpson and Chesoni, JJ (as they were) in [Re Hebtulla Properties Ltd](#) [1979] KLR 96; [1976-80] 1 KLR 1195 dealt in extenso with the provisions of section 12 of [cap 301](#). Chesoni, J on his part expressed himself to the extent that the tribunal is a creature of statute and derives its powers from the statute that creates it. Its jurisdiction being limited by statute it can only do those things, which the statute has empowered it to do since its powers are expressed and cannot be implied
22. However in the affidavit of one Lucia Kimithi it has been brought to the attention of this Tribunal that indeed the parcel of land on which the suit premises lie Masii/mithini/143 is not a property listed in the grant and a search has been annexed showing it belongs to one Pricilla Wanjiru even though the valuation report mentions the registered owner as Lazaras Matheka pursuant to a rate demand notice which document cannot act as a proof of ownership. It is not clear the relationship between Pricilla



Wanjiru and 3<sup>rd</sup> and 4<sup>th</sup> respondents late mother Ruth Matheka and the other Mathekas as regards this property. Ruth Matheka is also listed as a beneficiary in Masii/mithini/475 which is the only property subject to the succession and grant confirmed which also entitled the 3<sup>rd</sup> and 4<sup>th</sup> respondents to a share of the estate but again, I leave it to the trial succession court to make a determination on 143.

23. In light of the foregoing, it is my respectful finding that this Tribunal can in the interim protect the interest of the tenants and all the landlords in the interim by substantively dealing with the application dated July 25, 2022, orders to be issued herein below. I therefore return to the reference
24. Based on the above, it is the contention of this Tribunal that the other issue to be determined is whether the landlords have a right to increase rent.
25. In the case before me, the landlord wishes to increase the rent payable for the occupation of the suit premises. I have perused through the valuation report dated March 8, 2022 and the recommendations ensuing therefrom, as to the market value of the rent is 35,000. I note that the recommended rent amount by the landlord 20,000 is lower than the market value as per the said valuation report. Thus reasonable and justifiable.
26. The upshot of this finding is that, I settle the reference as follows:
  - i. Landlords allowed to vary the monthly rent payable to KSH 20,000 per month from February 2023.
  - ii. The same shall be paid to the Tribunal in light of the Succession Causes on going or yet to be commenced more particular Masii/mathini/143 where the suit premises is located.
  - iii. Parties to bear their own costs.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 27<sup>TH</sup> DAY OF JANUARY 2023 IN THE PRESENCE OF MUTUKU HOLDING BRIEF FOR MUTINDA FOR LANDLORD AND KAMAU FOR THE TENANT**

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

