



Yusuf & another v Haji; Jillo & another (Interested Parties) (Tribunal Case E881 & E911 of 2022 (Consolidated)) [2023] KEBPRT 248 (KLR) (Commercial & Admiralty) (14 April 2023) (Ruling)

Neutral citation: [2023] KEBPRT 248 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
COMMERCIAL AND ADMIRALTY
TRIBUNAL CASE E881 & E911 OF 2022 (CONSOLIDATED)
A MUMA, VICE CHAIR
APRIL 14, 2023

BETWEEN

SAHRA KHALIF YUSUF 1ST APPLICANT

ABDIAZIZ BISHAR HAPI 2ND APPLICANT

AND

FATUMA MOHAMED HAJI RESPONDENT

AND

KORE NASIRI JILLO INTERESTED PARTY

ABC BANK INTERESTED PARTY

RULING

A. Parties And Representatives

1. The Applicants Sahra Khalif and Abdiaziz Bishar are the applicants and had rented space on the Suit Property known as Homeland Apartments located on LR. No. 36/11/48 for the business. (hereinafter known as the ‘tenants’)
2. The firm of Abdullahi & Associates Advocates represent the Tenant/Applicants in this matter.
3. The Respondent Fatuma Mohammed Haji is the alleged Landlord and rented out space for the business in the suit property to the Tenant. (hereinafter the ‘landlord’)
4. The firm of Maingi Musyimi & Associates Advocates represent the Respondent in this matter.



5. Kore Nasiri Jillo is the Interested Party and acquired the property via auction by the 2nd Interested Party ABC Bank represented by the firm of Gakunga Advocate from the Landlord. (hereinafter ‘the interested party’)

B. The Dispute Background

6. The Landlord and the Tenant entered into a Tenancy Agreement dated 1st June 2021 for a period of four years.
7. The Suit property has since been transferred to the Interested Party through a Sale by Auction. The interested party has threatened to evict the Tenant from the premises due to default in paying rent.
8. In response the Tenant has filed a Reference dated 7th October 2022 opposing the said Notice as well as a Notice of Motion Application dated 7th October 2022 seeking that the Landlord be restrained from interfering with their quiet occupation as well as that the Landlord be restrained from evicting them.
9. This Tribunal pronounced itself on the aforementioned Reference and Application through a Ruling delivered on 2nd February 2023.
10. The Landlord has since filed an application dated 23rd February 2023 seeking that the Tribunal stay and set aside the orders issued in the Ruling delivered on February 2, 2023.

. The Landlord’s Claim

11. The Landlord has filed an application dated February 23, 2023 seeking that the Tribunal stay execution and set aside the orders issued in the Ruling delivered on February 2, 2023. On grounds that they were not heard.

D. The 1st And 2nd Interested Party’s Claim

12. The 1st and 2nd Interested Parties have filed Replying affidavits dated February 28, 2023 and March 3, 2023 respectively opposing the granting of the orders sought by the landlord/Applicant in the application.

E. List Of Issues For Determination

13. It is the contention of this Tribunal that the issues raised for determination are as follows;
Was the landlord heard?

F. Analysis And Findings Was The Landlord Heard?

14. The only issue before the Tribunal currently is the present application by the Landlord to set aside the orders issued earlier where the Tribunal pronounced itself on the issue at hand and gave final orders.
15. Section 12(1)(i) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments)* cap 301 accords the Tribunal the power to vary or rescind any order made by the itself under the provisions of the Act. As such the Tribunal does have the Jurisdiction to review the orders issued in the Ruling.
16. The landlord has stated that the grounds upon which they seek to have the orders set aside are that they are the proprietors of the suit property and that they were not made party to the proceedings. As a result, they were not able to file their response to the application by the 1st Interested Party dated October 18, 2022.



17. I have perused the application and indeed I find that they were parties to the application listed as a 'Defendant' in E911 of 2022. I have also noted that the firm of Maingi Musyimi was duly served and an affidavit of service is on record sworn by one Job Odhiambo Ochieng' Advocate evidencing the same but no Notice of Appointment was entered by the said firm in that cause, However a Notice of Appointment dated 1st November 2022 was entered in No E881 of 2022 but no responses were filed by the Landlord thereafter it is worth noting that E911 of 2022 was consolidated with E881 of 2022 on December 13, 2022.
18. I have also looked at the draft Responses now filed in this cause and it is my opinion that the arguments raised by the landlord are crucial in reaching an amicable decision in this matter. One such issue is the existence of HCCC No. 327 of 2017 wherein the landlord claims that the court gave orders barring the sale of the property by auction.
19. Even though it appears service was done it was done to counsel in E911 of 2022 and not to the 'Defendant'/Landlord it is not clear whether instructions in E881 of 2022 extended to E911 of 2022 and to avoid laying undue regard to procedural technicalities I will grant the Landlord audience.
20. I am also guided by the provisions of article 50(1) of the Constitution of Kenya which provides that;

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.
21. The Tribunal shall accord the landlord the liberty to file their papers and thereafter make a determination as to the merits of the case.
22. I therefore proceed to order as follows;

G. Orders

- a. The Landlord's Application dated February 23, 2023 is hereby allowed in the following terms;
- b. The orders issued by the Tribunal in the Ruling delivered on 2nd February 2023 are hereby set aside.
- c. The Landlord shall formally file their draft response annexed to their application dated February 23, 2023 together with written submissions to the application dated October 18, 2022 by the 1st interested Party.
- d. The Tenants and the 2nd Interested parties shall thereafter file their responses as well as submissions upon receipt of the landlord's documents within 7 days.
- e. Orders of November 16, 2022 continue in force till hearing and final determination.
- f. The matter shall be fixed for hearing on May 3, 2023.
- g. Costs shall be in the Cause.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 14TH DAY OF APRIL 2023 IN THE ABSENCE OF THE TENANTS, MUTUNGA FOR THE LANDLORD, IN THE ABSENCE OF THE 1ST INTERESTED PARTY AND GAKUNGA FOR THE 2ND INTERESTED PARTY.

HON A. MUMA

VICE CHAIR



BUSINESS PREMISES RENT TRIBUNAL

