



**Njoroge & 10 others v Army Kenya (Registered Trustees & 2 others (Tribunal Case E964 of 2024) [2024] KEBPRT 1739 (KLR) (11 December 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1739 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E964 OF 2024  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
DECEMBER 11, 2024**

**BETWEEN**

**GRACE NJERI NJOROGE ..... 1<sup>ST</sup> APPLICANT  
JOSEPHINE W WANGUI ..... 2<sup>ND</sup> APPLICANT  
MANASSEH LASHIGHONI MNAREMANGA ..... 3<sup>RD</sup> APPLICANT  
MILLICENT WANJIRU GITHATU ..... 4<sup>TH</sup> APPLICANT  
JAMES MWAURA NDUNG'U ..... 5<sup>TH</sup> APPLICANT  
EPHANTUS GIKONYO GUTHERA ..... 6<sup>TH</sup> APPLICANT  
CHARITY WARUGURU ..... 7<sup>TH</sup> APPLICANT  
SARAH W KAMAU ..... 8<sup>TH</sup> APPLICANT  
SHARATH BERAKHA ..... 9<sup>TH</sup> APPLICANT  
ROSEMARY KATHAMBI ..... 10<sup>TH</sup> APPLICANT  
EDWARD NDUATI NJOROGE T/A EDETEL ODEAL TECCHNOLOGY .... 11<sup>TH</sup>  
APPLICANT**

**AND**

**THE GENERAL OF THE SALVATION ARMY KENYA (REGISTERED  
TRUSTEES ..... 1<sup>ST</sup> RESPONDENT  
PICTURESQUE PROPERTIES LIMITED ..... 2<sup>ND</sup> RESPONDENT  
FUNAN CONSOLIDATED COMPANY LIMITED ..... 3<sup>RD</sup> RESPONDENT**



## RULING

### A. Dispute Background

1. The tenants/applicants moved this Tribunal vide a Reference under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 dated 30<sup>th</sup> August 2024 with a complaint that Funan Consolidated Company Ltd (3<sup>rd</sup> Respondent) purporting to be a new Landlord and Picturesque Properties Ltd purporting to be its agents have without any lawful process appeared in the scene and purported to demand entry into new leases in spite of the already existing tenancies, demanded increased rent and demanded payment of hundreds of thousands as goodwill failure to which dire consequences would be employed on the Applicants. The 1<sup>st</sup> Respondent being the owners of the premises and current Landlord of the Tenants as per Section 5 of Cap 301 has failed to give the Applicants guidance.
2. Picturesque Properties LTD (2<sup>nd</sup> Respondent) who are strangers to the Applicants have also demanded to be paid rents accruing in respect of the suit premises. The Applicants are unsure of the legitimacy of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in collecting rent and are willing to deposit the accruing rents with the Tribunal until properly directed.
3. The Landlord/Respondent has in essence purported to alter and terminate the respective tenancies herein (all of which are protected) without following the prescribed procedure under Cap. 301 of the Laws of Kenya.
4. The tenants therefore pray that: -
  - a. The aforesaid notices and actions be declared illegal and the Landlord/Respondents by himself, his servant and/or agents be restrained from interfering with the Applicant's quiet possession of the suit premises or evicting them or altering the terms of the tenancies without following the prescribed procedure.
  - b. The Tribunal does give a finding as to who is entitled to collect rent between the Respondents.
  - c. A declaration be given to the effect that the Applicants at the determination of their respective tenancies are entitled to be refunded their deposits on rent by the 1<sup>st</sup> Respondent or such other Respondent as the Tribunal may deem fit.
  - d. A finding be made that the purported increase of rent and the demand for payment of goodwill be declared to be illegal and contrary to the provisions of Cap 301 of the Laws of Kenya.
  - e. The monies collected by duress from the tenants as goodwill in the year 2023 by Funan Consolidated Company LTD and/or Picturesque Properties Ltd be either refunded to the depositors or be utilized as advance rent or be set off from rent payable till exhaustion.
  - f. The OCS Kamukunji Police Station to ensure compliance with the orders.
5. The tenants simultaneously filed a motion dated 30<sup>th</sup> August 2024 in which they have inter-alia sought for orders that pending the hearing and determination of the application, the Respondents be restrained by themselves, servants and/or agents, from evicting, interfering and/or harassing them in respect of their respective demised premises on L.R. No.209/1951 located along the junction of Racecourse/ River Road.



6. They further seek for an order that pending the hearing and determination of the Complaint, the Respondents be restrained by themselves, servants and/or agents, from evicting, interfering, and/or harassing them in respect of their respective demised premises on L.R. No.209/1951 located along the junction of Race Course/River Road.
7. The application is predicated upon the grounds set out on the face thereof and the affidavit of the 11<sup>th</sup> Applicant sworn on 30<sup>th</sup> August 2024 wherein it is deposed that all the tenants occupy various shops within the suit premises having paid goodwill and rent deposits for the same. The affiant deposes that he paid Kshs 5,180,000/= together with one month rent deposit to Rocket General Merchants which is a sister Company of the 3<sup>rd</sup> Respondent.
8. The 1<sup>st</sup> to 10<sup>th</sup> Applicants are all tenants of the Respondents carrying out businesses of various kinds including phones & accessories, Electronics, packaging, beddings & carpets, shoe store amongst others in the suit premises.
9. All the Applicants have no written tenancy agreements and are protected tenants within the said premises. The premises are registered in the name of the 1<sup>st</sup> Respondent which had in February 2010 entered into an agreement with the 3<sup>rd</sup> Respondent which was to construct stalls and offices along the perimeter fence of the church using its own resources with intention to lease out the stalls and offices and operate them for a period of five years which period was later increased by six years to enable it recoup the money expended in the project before handing over the stalls and offices to the church. The Applicants have attached as Exhibit ENN 3 a true copy of the judgment in Samuel Musau & 33 others v Andrew Makau & 10 others [2021] eKLR which gives a proper description of the status.
10. Most Applicants are not employed elsewhere and this is the only income generating activity they are engaged in which gives them their daily bread and enables them to fend for their respective families.
11. The 3<sup>rd</sup> Respondent informed all the tenants that its master lease with the 1<sup>st</sup> Respondent was coming to an end on 30<sup>th</sup> September 2023 and that they were to be informed about the new agent to handle them. Attached to the supporting affidavit and marked Exhibit ENN 4 is a true copy of the Letter dated 1<sup>st</sup> July 2023 from the 3<sup>rd</sup> Respondent.
12. There was no handover of the premises from the old management Company to the new management Company leaving the Applicants in limbo but from the blues, the 2<sup>nd</sup> Respondent without any introduction from either the 1<sup>st</sup> or 3<sup>rd</sup> Respondent appeared and begun issuing directives including unilateral verbal increment of rent payable, demanded payment of what it was terming as goodwill amounting to Kshs. 800,000/= for every stall on the ground floor and Kshs.300,000/= from those on the upper floor. The tenants rely on annexure marked Exhibit ENN 5 being a true copy of a letter dated 1<sup>st</sup> October 2023 and another one 24<sup>th</sup> November 2023.
13. From the two letters from the 2<sup>nd</sup> Respondent, it is apparent that it was demanding payment of rent to it, demanding payment of fresh goodwill, demanding entry into new lease arrangements while threatening that failure to acquire a new lease would lead to eviction and make the subject premises available for renting to third parties.
14. The 2<sup>nd</sup> Respondent is accused of threatening James Mwaura Ndungu (the 5<sup>th</sup> Applicant) by asking him to vacate the premises. The Applicants have attached as Exhibit ENN 6 true copies of letters dated 23<sup>rd</sup> October 2023 and 14<sup>th</sup> December 2023 from the 2<sup>nd</sup> Respondent to the 5<sup>th</sup> Applicant.



15. The import of the 2<sup>nd</sup> Respondent's action is that it is unilaterally altering the terms of the 5<sup>th</sup> tenant's tenancy without issuing the prescribed form or following the prescribed procedure as well as purporting to terminate tenancies illegally.
16. Threatened with dire consequences, some of the Applicants agreed to make payments of the newly demanded goodwill as evidenced by Exhibits ENN6 and ENN7 being a true copy of the List of 6 tenants and their details as well as a bundle of payment slips for Mpesa and bank transactions.
17. Due to uncertainties surrounding the entire tenancy management issue and the illegal directives, the Applicants together with other tenants held a peaceful demonstration outside the 1<sup>st</sup> Respondent's church sometimes on 17<sup>th</sup> December 2023 and also dispatched a complaint to the 1<sup>st</sup> Respondent's headquarters in London, United Kingdom as evidenced by Exhibit ENN 8 being a true copy of the letter dated 11<sup>th</sup> December 2023.
18. The said Notices pertaining to increment of rent, payment of goodwill, and termination of tenancy do not comply with the prescribed format under Cap.301 of the Laws of Kenya.
19. The premises are registered in the name of the 1<sup>st</sup> Respondent which had leased to Funan Construction Company Ltd which in turn leased to the Applicants amongst other persons. The Applicants were tenants of Funan Construction Ltd whose lease with The General of the Salvation Army, Registered Trustees lapsed on 30<sup>th</sup> September 2023 and pursuant to Section 5 of Cap 301, the Applicants became tenants of 1<sup>st</sup> Respondent which holds the interest in reversion.
20. The 3<sup>rd</sup> Respondent purports to be the new landlord while the 2<sup>nd</sup> Respondent purports to be its agents have without any lawful process appeared in the scene and purported to demand entry into new leases in spite of already existing tenancies. They have demanded increased rent and payment of goodwill amounting to Kshs. 800,000/= for every stall on the ground floor and Kshs. 300,000/= from those on the upper floor failure to which dire consequences are to be employed on the Applicants. The 1<sup>st</sup> Respondent being the owners of the premises and current landlord of the tenants under Section 5 of Cap 301 has failed to give the Applicants guidance.
21. The 2<sup>nd</sup> Respondent which is a stranger to the Applicants have also demanded to be paid rents accruing in respect to the suit premises. The Applicants depose that they are unsure of the legitimacy of Funan Consolidated Company LTD and Picturesque Properties LTD in collecting rent and are willing to deposit the accruing rents with the Tribunal until properly directed.
22. The tenants believe that the demand for payment of goodwill is a fraudulent scheme by faceless persons to fleece the Applicants especially considering that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are operated by related people and the staff they are purporting to employ such as David Ndiang'u.
23. The Applicants depose that they are not in default of their obligations and have immensely invested in the businesses which they completely rely on for their livelihoods. The tenants are apprehensive that the Landlord or the Respondents may interfere with their tenancies if they don't comply with the illegal demands as the 2<sup>nd</sup> Respondent had given until 23<sup>rd</sup> January 2024 as can be seen from Exhibit ENN10 which is a true copy of a letter from the 2<sup>nd</sup> Respondent dated 19<sup>th</sup> January 2024 and another from T.W Murage dated 28<sup>th</sup> August 2024.
24. The Applicants depose that they are not sure as to who is entitled to collect rent between the Respondents and as such, an order from this Tribunal would help in getting clarity and ensure that the Applicants do not fall victim to fraud.



25. Each of the Applicants paid 2 months' rent deposit to the 3<sup>rd</sup> Respondent and yet none of the Respondents is giving clarity on the fate of the rent deposits. The tenants therefore seek for a declaration to issue to the effect that at the determination of their respective tenancies, they will be entitled to be refunded their deposits on rent. The monies collected by duress from the tenants as goodwill in the year 2023 to be either refunded to the depositors, be utilized as advance rent or be set off from rent payable till exhaustion.
26. A previous matter namely BPRT E070 of 2024 was struck out on technicality of not being accompanied by Form C and for having sued the wrong entity.
27. The application is opposed through the replying affidavits of Arthur Lord for the 1<sup>st</sup> Respondent sworn on 20<sup>th</sup> September 2024 and Benjamin Ndiang'ui for the 3<sup>rd</sup> Respondent sworn on 19<sup>th</sup> September 2024.
28. According to the 1<sup>st</sup> Respondent, the Applicants are appearing before this Tribunal for the third time seeking for the same orders. The last time the Applicants appeared before Hon. James Ndegwa who delivered his ruling striking out their application in its entirety for being incompetent. A copy of the ruling marked AL-I in BPRT E70 OF 2024 is attached to the replying affidavit.
29. It is the 1<sup>st</sup> Respondent's case that there was a determination that there is no Landlord and Tenant relationship between the Applicants and the 1<sup>st</sup> Respondent on the one hand and the applicants and the 3<sup>rd</sup> Respondent on the other hand as envisaged under Section 2(1) of the Act and the application dated 22<sup>nd</sup> January 2024 had no merit.
30. The Tribunal in its ruling proceeded to made the following remarks, "It then leaks of mischief on the part of applicants with all the information in their possession to drag the Respondents in court and leave out M/S Funan Consolidated Company Ltd who should be the principal prayers in this suit. For clarity, the suit against the 2<sup>nd</sup> Respondent also cannot stand in the absence of M/S Funan Consolidated Company Ltd in these proceedings."
31. It is therefore deposed that the 1<sup>st</sup> Respondent has never in any way been involved with the issues raised by the Applicants as there exists no relationship between it and them. The Salvation Army Complex located on Land Reference Number 209/1951 were initially leased to Funan Construction Limited whose lease has since expired.
32. Following the expiry of the lease, the property was leased to a new lessee, Funan Consolidated Company Limited, the 3<sup>rd</sup> Respondent herein who are responsible for the Management of the property in which the Applicants' businesses are located.
33. According to the 1<sup>st</sup> Respondent, pursuant to Section 23 of the Land Act 2012, there exists an implied covenant by the lessor that the lessee shall enjoy quiet possession of the premises without interruption by the Lessor or any person claiming under the Lessor, except so far as the laws for the time being in force may permit.
34. The 1<sup>st</sup> Respondent herein is a stranger to the averments made in the application as it has never collected deposits, rental monies, good will from the Applicants and the same would be a manifest interruption of the 3<sup>rd</sup> Respondent's quiet possession.
35. The Applicants' application raises issues of rent collection, deposits and good will and further prays that this Tribunal makes a finding on who between the Respondents is responsible for rent collection. It is the 1<sup>st</sup> Respondent's contention that it is in no way, shape or form involved in matters of rent



collection, deposits and good will, the same having been long decided by this Tribunal in the ruling delivered by Hon. James Ndegwa on 21<sup>st</sup> August 2024.

36. The 1<sup>st</sup> Respondent deposes that it is not privy to any agreement and/contract made between the Applicants and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents neither has it ever entered into any relationship legal or otherwise with the Applicants. The Applicants' current application against the Respondents is a mere exercise of forum shopping and fishing of orders and this Tribunal should dismiss it with costs to the Respondents.
37. The 3<sup>rd</sup> Respondent deposes that the Applicants were tenants of Funan Construction Company in the premises known as L.R NO. 209/1951 located along the junction of Race Course/River road until when the lease expired on 30<sup>th</sup> September 2023 and were informed of the new lease holder being the 3<sup>rd</sup> Respondent as per the letter by the 1<sup>st</sup> Respondent dated 1<sup>st</sup> August 2023 attached to the replying affidavit as annexure "b.n1" terminating the lease.
38. The 2<sup>nd</sup> Respondent was the agent of the former lease holder whose lease expired on 30<sup>th</sup> September 2023 and thus the new lease holder has a right to retain the said agent.
39. A notice was issued to the tenants in regard to payment as annexed by the Applicants and as such, they cannot claim that they are not aware of the new lease holder to whom they were instructed to pay rent but failed or neglected to do so.
40. Some of the said Applicants have sublet their premises and continue to receive rent but fail to remit it to the lease holder who has suffered immensely as he has to look for other means to pay the head lessor being the 1<sup>st</sup> Respondent.
41. According to the 3<sup>rd</sup> Respondent, the 11<sup>th</sup> tenant has alluded to having paid goodwill to Rocket Merchant which the 3<sup>rd</sup> Respondent is a stranger to as it is an independent Company and has no subsidiary Company. The suit property was leased to Funan Construction Limited.
42. According to the 3<sup>rd</sup> Respondent, any refund was to be made by the former lease holder to whom the tenants claim to have paid rent deposit or goodwill and the allegation that the deposit was paid to the 3<sup>rd</sup> Respondent is evidently on the face of the supporting affidavit vividly false as the 3<sup>rd</sup> Respondent did not exist. Since tenant/landlord relationship between the former lease holder and the Applicants lapsed upon expiry of the lease, this Tribunal has no jurisdiction to entertain such allegation and the same can be claimed in another forum between the concerned parties.
43. It is the 3<sup>rd</sup> Respondent's case that Funan Construction Company whose lease had expired issued a letter to the Applicants indicating the expiry of its lease with the 1<sup>st</sup> Respondent and issued a hand over meeting notice to all the tenants some of whom attended while some ignored as per the annexed letter marked "b.n 2" from the Funan Construction Company dated 4<sup>th</sup> September 2023.
44. There was a meeting convened on 7<sup>th</sup> August 2023 at the 1<sup>st</sup> Respondent's Complex where representatives of all the Respondents were present as well as some tenants and a representative of the new lease holder being Funan Consolidated Company Limited as per annexure marked "b.n 3" which is a copy of the minutes dated 7<sup>th</sup> August 2023.
45. At the said meeting, the new leaseholder informed the attendees that it was to retain the 2<sup>nd</sup> Respondent herein as its agent and issued an appointment letter since the said agent was familiar with the tenants and that there was a backlog of unpaid rent which the 2<sup>nd</sup> Respondent had failed to remit due to constant neglect of payment of rent by the applicants herein. The appointment letter dated 11<sup>th</sup> September 2023 is attached as annexure "b.n 4".





46. It is the 3<sup>rd</sup> Respondent's case that the Applicants have flouted the maxim of equity that "he who seeks equity must do equity" having failed to pay rent while giving unfounded reasons which on the face of it is a ploy to defeat justice and enrich themselves as they cannot be receiving rent from their sub-tenants and fail to remit the same to the 3<sup>rd</sup> Respondent after they were informed by all the Respondents herein and notices issued to them which they have produced in these pleadings.
47. The Applicants are accused of being in colossal rent arrears and have not been paying rent and the receipts attached are for the year 2015 which demonstrates how witty and cunning they can be in order to circumvent justice having filed a matter in this Tribunal being BPRT/E070/2023 that was dismissed with costs on 21<sup>st</sup> August 2024.
48. After the said matter, the 3<sup>rd</sup> Respondent issued a demand for payment of rent arrears and no goodwill was asked from the tenants as alluded by them.
49. The matter was directed to be canvassed by way of written submissions but only the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents complied.

## **B. Issues for determination**

The following issues arise for determination: -

- a. Whether the Applicants' tenancies are controlled under Cap 301, Laws of Kenya.
- b. Whether the instant dispute has been previously determined on the merits between the parties as to render it Res Judicata.
- c. Whether the Applicants are entitled to the reliefs sought in the reference and application dated 30<sup>th</sup> August 2024.
- d. Who shall bear the costs of the application and reference?

### **ISSUEa) Whether the Applicants' tenancies are controlled under Cap 301, Laws of Kenya.**

50. All the tenants claim to occupy various shops within the suit premises situate on L.R NO. 209/1971 on the junction of Racecourse/River Road having paid goodwill and rent deposits for the same to Rocket General Merchants which is alleged to be a sister Company of the 3<sup>rd</sup> Respondent. The 11<sup>th</sup> Applicant deposes that he paid Kshs 5,180,000/= together with one month's rent deposit to Rocket General Merchants which is a sister Company of the 3<sup>rd</sup> Respondent.
51. The 1<sup>st</sup> to 10<sup>th</sup> Applicants claim to be tenants of the Respondents carrying out businesses of various kinds including phones & accessories, Electronics, packaging, beddings & carpets, shoe store amongst others in the suit premises.
52. All the Applicants have no written tenancy agreements and claim to be protected tenants within the said premises. The premises are registered in the name of the 1<sup>st</sup> Respondent which had in February 2010 entered into an agreement with the 3<sup>rd</sup> Respondent which was to construct stalls and offices along the perimeter fence of the church using its own resources with intention to lease out the stalls and offices and operate them for a period of five years which period was later increased by six years to enable it recoup the money expended in the project before handing over the stalls and offices to the church. The Applicants have attached as Exhibit ENN 3 a true copy of the judgment in Samuel Musau & 33 others v Andrew Makau & 10 others [2021] eKLR which gives a proper description of the status.
53. The 3<sup>rd</sup> Respondent deposes that the Applicants were tenants of Funan Construction Company in the premises known as L.R NO. 209/1951 located along the junction of Race Course/River road until



when the lease expired on 30<sup>th</sup> September 2023 and were informed of the new lease holder being the 3<sup>rd</sup> Respondent as per the letter by the 1<sup>st</sup> Respondent dated 1<sup>st</sup> August 2023 attached to the replying affidavit as annexure “b.n1” terminating the lease.

54. The 2<sup>nd</sup> Respondent was the agent of the former lease holder whose lease expired on 30<sup>th</sup> September 2023 and thus the new lease holder has a right to retain the said agent.
55. A notice was issued to the tenants in regard to payment as annexed by the Applicants and as such, it is deposed that they cannot claim that they are not aware of the new lease holder to whom they were instructed to pay rent but failed or neglected to do so.
56. Some of the said Applicants have sublet their premises and continue to receive rent but fail to remit it to the lease holder who has suffered immensely as he has to look for other means to pay the head lessor being the 1<sup>st</sup> Respondent.
57. According to the 3<sup>rd</sup> Respondent, the 11<sup>th</sup> tenant has alluded to having paid goodwill to Rocket Merchant which the 3<sup>rd</sup> Respondent is a stranger to as it is an independent Company and has no subsidiary Company. The suit property was leased to Funan Construction Limited.
58. According to the 3<sup>rd</sup> Respondent, any refund was to be made by the former lease holder to whom the tenants claim to have paid rent deposit or goodwill and the allegation that the deposit was paid to the 3<sup>rd</sup> Respondent is evidently on the face of the supporting affidavit vividly false as the 3<sup>rd</sup> Respondent did not exist. Since tenant/landlord relationship between the former lease holder and the Applicants lapsed upon expiry of the lease, this Tribunal has no jurisdiction to entertain such allegation and the same can be claimed in another forum between the concerned parties.
59. It is the 3<sup>rd</sup> Respondent’s case that Funan Construction Company whose lease had expired issued a letter to the Applicants indicating the expiry of its lease with the 1<sup>st</sup> Respondent and issued a hand over meeting notice to all the tenants some of whom attended while some ignored as per the annexed letter marked “b.n 2” from the Funan Construction Company dated 4<sup>th</sup> September 2023.
60. There was a meeting convened on 7<sup>th</sup> August 2023 at the 1<sup>st</sup> Respondent’s Complex where representatives of all the Respondents were present as well as some tenants and a representative of the new lease holder being Funan Consolidated Company Limited as per annexure marked “b.n 3” which is a copy of the minutes dated 7<sup>th</sup> August 2023.
61. At the said meeting, the new lease holder informed the attendees that it was to retain the 2<sup>nd</sup> Respondent herein as its agent and issued an appointment letter since the said agent was familiar with the tenants and that there was a backlog of unpaid rent which the 2<sup>nd</sup> Respondent had failed to remit due to constant neglect of payment of rent by the applicants herein. The appointment letter dated 11<sup>th</sup> September 2023 is attached as annexure “b.n 4”.
62. It is therefore clear that the Applicants having been subtenants in the suit premises who have never been issued with notices of termination of their tenancies cannot be treated as trespassers in the premises. The Respondents cannot be heard to suggest that their tenancies came to an end after the head tenant’s lease expired. They ought to have been served with notices of termination of their tenancies if at all the 1<sup>st</sup> Respondent or the new lessor was interested in obtaining vacant possession of the suit premises in line with Section 5 of Cap 301 which provides as follows: -
  - (1) Where a landlord is himself a tenant, the termination of the landlord’s tenancy shall not of itself terminate a controlled sub-tenancy, but for the purposes of this Act the person entitled to the interest in reversion expectant on the termination of the landlord’s tenancy shall be deemed





to be the landlord of the controlled sub-tenancy upon the terms and conditions thereof and subject to the provisions of this Act.”

**ISSUE b) Whether the instant dispute has been previously determined on the merits between the parties as to render it Res Judicata.**

63. We have noted what the 3<sup>rd</sup> Respondent has stated in regard to the previous ruling in NAIROBI BPRT NO. E070 OF 2024. We have perused the said ruling and noted that the tenants’ application was struck out on the basis that the same was not anchored on any reference to this Tribunal by the tenant as required under Section 12(4) of Cap 301. We observe that the matter was never heard nor determined on the merits and as such cannot be deemed as Res Judicata.
64. In any event, the head landlord had not been joined as a party in the said case and having been joined herein, this suit ought to proceed to hearing and determination on the merits.
65. We find and hold that upon expiry of the lease agreement between the 1<sup>st</sup> Respondent and Funan Construction Limited which had in turn leased out part of the suit premises to the Applicants, their tenancies reverted back to the head landlord under Section 5 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301, Laws of Kenya.

ISSUE c) Whether the Applicants are entitled to the reliefs sought in the reference and application dated 30th August 2024.

66. The tenant/applicant moved this Tribunal vide a Reference under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 dated 30<sup>th</sup> August 2024 with a complaint that FUNAN CONSOLIDATED COMPANY LTD (3<sup>rd</sup> Respondent) purporting to be a new Landlord and PICTURESQUE PROPERTIES LTD purporting to be its agents have without any lawful process appeared in the scene and purported to demand entry into new leases with the subtenants in spite of the already existing tenancies, demanded increased rent and demanded payment of hundreds of thousands as goodwill failure to which dire consequences would be employed on the Applicants. The 1<sup>st</sup> Respondent being the owners of the premises and current Landlord of the Tenants as per Section 5 of Cap 301 has failed to give the Applicants guidance.
67. PICTURESQUE PROPERTIES LTD (2<sup>nd</sup> Respondent) who are strangers to the Applicants have also demanded to be paid rents accruing in respect of the suit premises. The Applicants are unsure of the legitimacy of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in collecting rent and are willing to deposit the accruing rents with the Tribunal until properly directed.
68. The Landlord/Respondent has in essence purported to alter and terminate the respective tenancies herein (all of which are protected) without following the prescribed procedure under Cap. 301 of the Laws of Kenya.
69. The tenants therefore pray that: -
- a. The aforesaid notices and action be declared illegal and the Landlord/Respondents by himself, his servant and/or agents be restrained from interfering with the Applicant’s quiet possession of the suit premises or evicting them or altering the terms of the Tenancies without following the prescribed procedure.
  - b. The Tribunal does give a finding as to who is entitled to collect rent between the Respondents.



- c. A declaration be given to the effect that the Applicants at the determination of their respective tenancies are entitled to be refunded their deposits on rent by the 1<sup>st</sup> Respondent or such other Respondent as the Tribunal may deem fit.
  - d. A finding be made that the purported increase of rent and the demand for payment of goodwill be declared to be illegal and contrary to the provisions of Cap 301 of the Laws of Kenya.
  - e. The monies collected by duress from the tenants as goodwill in the year 2023 by the FUNAN CONSOLIDATED COMPANY LTD and/or PICTURESQUE PROPERTIES LTD be either refunded to the depositors or be utilized as advance rent or be set off from rent payable till exhaustion.
  - f. The OCS Kamukunji Police Station to ensure compliance with the orders.
70. The tenants simultaneously filed a motion dated 30<sup>th</sup> August 2024 in which they inter-alia sought for orders that pending the hearing and determination of the application, the Respondents be restrained by themselves, servants and/or agents, from evicting, interfering and/or harassing them in respect of their respective demised premises on L.R. No.209/1951 located along the junction of Racecourse/ River Road.
71. They further sought for an order that pending the hearing and determination of the Complaint, the Respondents be restrained by themselves, servants and/or agents, from evicting, interfering, and/or harassing them in respect of their respective demised premises on L.R. No.209/1951 located along the junction of Race Course/River Road.
72. The tenants came to this Tribunal fearing that they would be evicted by the Respondents from the suit premises unless they were protected by the Tribunal from such action.
73. The short title to the Landlord and Tenant (Shops, Hotels and Catering Establishments Act) Cap 301, Laws of Kenya is in the following terms:
- “An Act of Parliament to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto.”
74. It is therefore clear that this Tribunal having been founded to inter-alia protect controlled tenants from eviction from protected premises ought not abdicate the said duty in this case by exposing the Applicants from the said vice.
75. In the case of ASSANAND VS PETTITT (1978) eKLR, the Superior Court discussed the essence of a temporary injunction in the following terms: -
- “The object of a temporary injunction, as Mr Khanna has reminded me, are, as stated by Cotton, L J in Preston v Luck (1884) 27 Ch D at p 505;
- “to keep things in status quo, so that, if at the hearing the plaintiffs obtain a judgment in their favour, the defendants will have been prevented from dealing in the meantime with the property in such a way as to make that judgment ineffectual.”
- Broadly speaking three matters have to be considered by the Court in exercising judicially its undoubted judicial discretion whether to grant this very effective remedy, namely,



- (a) Whether the applicant has shown that he has a prima facie case with a probability of success: see for instance Spry, JA in *Mohamed v Haidara* [1972] EA at p 168 B and Cotton, LJ in *Preston v Luck* (supra) also at p 505.
  - (b) Whether on a consideration of the balance of convenience the plaintiff will suffer more if the injunction is not granted than the defendant will if it is – see Law, Ag V-P in *Devani v Bhadrina* [1972] EA 25.
  - (c) Whether damages will be the adequate remedy: This is not so, for example, where “the disruption caused by the defendant’s action is unjustified and so great that damages are not an adequate remedy”. Per Sacks, LJ in *Evans Marshalls & Co Ltd v Bertola* [1973] 1 All ER at p 1007.”
76. We are satisfied that the Applicants have met the principles considered in an application for temporary injunction and we shall proceed to make orders in terms of prayers 4 & 5 of the application pending hearing and determination of the Complaint/reference on the merits.
77. We are aware of the Respondents’ contention that the tenants have not been paying rent. The tenants on the other hand claim that they are not aware who is entitled to receive the said rent among the Respondents. The Respondents have not provided any rent account statements to show how much rent is claimed against the tenants. We shall therefore direct the tenants to henceforth deposit all the unpaid rent with the Tribunal awaiting determination of the Reference/Complaint.
78. As regards the Reference/Complaint, the same shall proceed to hearing by way of viva voce evidence upon all the parties complying with Order 11 of the Civil Procedure Rules, 2010 by filing witnesses’ statements and documents in support of their respective cases.

#### **ISSUE (d) Who shall bear the cost of application?**

79. As regards costs, the same are in the Tribunal’s discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall order costs of the application to abide the outcome of the Reference/Complaint.

#### **C. ORDERS**

80. Given the above analysis, the interim orders which commend to us are;
- a. The tenants’ application dated 30<sup>th</sup> August 2024 is allowed in terms of prayers 4 & 5 thereof.
  - b. The tenants’ Reference/Complaint dated 30<sup>th</sup> August 2024 shall proceed to hearing by way of viva voce evidence upon all the parties complying with Order 11 of the Civil Procedure Rules, 2010 by filing witnesses’ statements and documents in support of their respective cases in any event within the next Thirty (30) days hereof.
  - c. The tenants shall henceforth deposit all the unpaid rent with the Tribunal awaiting determination of the Reference/Complaint.
  - d. The costs of the application shall abide the outcome of the main Reference/Complaint
- It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11<sup>TH</sup> DAY OF DECEMBER 2024**

**HON. GAKUHI CHEGE**



**(PANEL CHAIRPERSON)**

BUSINESS PREMISES RENT TRIBUNAL

**HON JOYCE OSODO**

**(MEMBER)**

In the presence of:

Miss Kiiru holding brief for Thuita for tenants

Miss Mwanzia for 1<sup>st</sup> Respondent

Mwangi for 2<sup>nd</sup> & 3<sup>rd</sup> Respondents

Further order: mention for Pretrial directions on 30/1/2025.

