



**Mohamed & another v Billel (Tribunal Case 261 of 2020)  
[2023] KEBPRT 1282 (KLR) (Civ) (6 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1282 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE 261 OF 2020  
GAKUHI CHEGE, AG. CHAIR  
OCTOBER 6, 2023**

**BETWEEN**

**BADAWY ALI MOHAMED ..... 1<sup>ST</sup> APPLICANT**

**MOHAMED ABDULKADIR ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MOHAMED ALI BILLEL ..... RESPONDENT**

**RULING**

1. By a motion dated 1<sup>st</sup> March 2023, the Applicants in material part seek for review of the decision of the tribunal delivered on 15<sup>th</sup> July 2022 by me on the grounds set out on the face of the application and the affidavit of the 1<sup>st</sup> Applicant sworn on 20<sup>th</sup> February 2023.
2. The Applicants claim to have learnt of the Ruling on 25<sup>th</sup> November 2022 when their Advocates N.A. Ali & Company Advocates wrote an email requiring them to collect their documents and Ruling.
3. The Applicants plead that they were tenants of the Respondents' deceased father one Ali Billel in respect of the premises known as Plot No. 784/1, Lamu Langoni road, Galgalo road until he passed on in the year 2018. Upon the Landlord's demise, the tenancy relationship continued with the Respondent holding out as the deceased's estate administrator, personal representative and heir who had legal right to the income from the rental premises.
4. The Respondent however complained about the rent as being below the market rates and at times declined to receive rent. The Respondent served notices to alter terms of tenancy upon the Applicants on 9<sup>th</sup> September 2020 in his capacity as administrator, personal representative and/or heir to the deceased who had accrued a legal right to the premises.



5. According to the Applicants, the non-disclosure of evidence of the Applicant's right to administer the property despite not being the legal owner bordered on fraud and was deliberately misleading the Tribunal as he ought to have known the processes of successes.
6. It is pleaded that the Tribunal exercised jurisdiction in a matter which it ought to have downed tools as the Respondent had no power to issue a Landlord's notice to terminate or alter terms of the tenancy. It is further pleaded that the Tribunal exercised jurisdiction in a matter which did not involve a landlord and tenant.
7. An order for stay of execution of the notice and order of 1<sup>st</sup> July 2022 was granted on 3<sup>rd</sup> April 2023 pending hearing inter partes on 22<sup>nd</sup> May 2023.
8. The application is opposed through the landlord's replying affidavit sworn on 22<sup>nd</sup> May 2023 wherein the same is attacked on account of delay of almost one (1) year which is unreasonable.
9. According to the landlord, the suit property was transferred to him by his father during his lifetime in terms of annexure "MAB-1" and as such did not constitute the estate of his late father.
10. The tenants filed references before this Tribunal and named the Respondent as their landlord and are as such bound by their own pleadings. The landlord denies having failed to accept rent.
11. The application was directed to be canvassed by way of written submissions and both parties complied. I shall refer to the submissions while dealing with the following issues for determination:
  - a. Whether the Applicants are entitled to the reliefs sought in the application dated 1<sup>st</sup> March 2023.
  - b. Who is liable to pay costs?
12. The Applicants main contention in seeking for review of the Ruling of 15<sup>th</sup> July 2022 is that the Respondent is not the administrator, personal representative and/or heir of their deceased landlord one Ali Bilel. They were represented by an Advocate during the hearing of the matter and the issue was not raised.
13. It is not contended that this is a new issue that has been discovered after the Ruling and that the same could not have been litigated in exercise of due diligence by the Applicants.
14. I have seen the decisions cited by Counsel for the Respondent in the cases of; *Suleiman Murunga vs Milestar Holdings Limited & Another* [2015] eKLR and *Hosea Nyandika Mosangtwe & 2 Others vs County Government of Nyamira* [2022] eKLR. While the first decision is not applicable to this case as the impugned relief is attached to the application, the second one is very relevant as it discusses the scope of review.
15. I am not convinced that the Applicants have brought themselves within the principles considered in an application for review. There is absolutely no discovery of new and important matter which was not within the Applicants knowledge after exercise of due diligence. No mistake or error apparent on the face of the record or any other sufficient reason has been demonstrated.
16. There is no dispute that the Respondent is a son of the late Ali Bilel (deceased) who was the tenant's landlord and as such a person entitled to rental income and his contention that the suit property was transferred to him during the lifetime of his late father has not been controverted. I have no reason to disbelieve the Respondent. No other person has sought to recover rent from the tenants in respect of the suit premises and in the circumstances, I do not find any reason for review of the ruling delivered on 15<sup>th</sup> July 2022. The application is thus a candidate for dismissal.



17. As regards costs, the same are in this Tribunal's discretion under Section 12(1)(K) of [Cap 301](#), Laws of Kenya. I have no reason to deny costs to the Respondent who is the successful party.
18. In conclusion, the following orders commend to me in this matter:-
- a. The Tenant's application dated 1<sup>st</sup> March 2023 is hereby dismissed with costs.
  - b. The landlord's costs are assessed at Kshs. 20,000/= against the tenants.
  - c. The stay order given on the 3<sup>rd</sup> April 2023 is hereby discharged/vacated forthwith.
- It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6<sup>TH</sup> DAY OF OCTOBER 2023**

**HON. GAKUHI CHEGE - CHAIRPERSON**

In the presence of:

Isikha holding brief for Omolo for the landlord/Respondent

Rotuk for the Tenant/Applicant

