



**Total Security Limited & Le Molok Ltd v Teleposta Pension Scheme
Registered Trustees & another (Tribunal Case 902 & 903 of 2016
(Consolidated)) [2023] KEBPRT 638 (KLR) (6 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 638 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 902 & 903 OF 2016 (CONSOLIDATED)
A MUMA, MEMBER
OCTOBER 6, 2023**

BETWEEN

TOTAL SECURITY LIMITED & LE MOLOK LTD TENANT

AND

**TELEPOSTA PENSION SCHEME REGISTERED TRUSTEES 1ST RESPONDENT
INTERCOUNTRIES IMPORTERS AND EXPORTERS LIMITED 2ND
RESPONDENT**

RULING

A. Parties And Their Representatives

1. The applicants, Total Security Limited & Le Molok Ltd, entered into a tenancy agreement for business premises erected on Property L.R No. 209/13238 formerly known as L.R. 209/2397.
2. The firm of Wandabwa Advocates is on record for the Tenants in this matter
3. The firm of Kale Maina Bondotich Advocates is on record for the 1st respondent in this matter.
4. The firm of Kilonzo & Company Advocates is on record for the 2nd respondent in this matter.

B. The Dispute Background

5. On June 22, 2023, the Tenant filed an Application seeking several orders including orders of stay of proceedings before this Tribunal in Tribunal Case No. 902 & 903 of 2016 pending the hearing and determination of Civil Appeal No. 293 of 2016: Teleposta Pension Scheme Registered Trustees vs. Intercountries Importers and Exporters Limited and 5 others. Which appeal predominantly deals with the question of ownership.



6. There also exists Civil Appeal E216 of 2021 where the jurisdiction of this court is contested this is an appeal arising from a high court decision which established this tribunal has jurisdiction to entertain this dispute.
7. Parties file affidavits and submissions which I have had opportunity to peruse in addition the parties submitted orally and I thank them for their guidance in reaching a decision in this matter I do not wish to restate all the facts in the case. Having perused all the documents, I will move to the issues for determination.

C. Issues For Determination

8. The issues raised for determination before this Tribunal are as follows;
 - a. Whether the Tribunal has power to stay its own proceeding. If so what is to be considered.

D. Analysis And Findings

Whether the Tribunal has power to stay its own proceedings

9. I have taken the liberty to look at the Judgement of the High Court in ELC Appeal 10 of 2017 by Obaga J. dated February 25, 2021 and I quote:

“The matter is before the Court of Appeal and nothing stops the 3rd respondent from letting supply which he has been occupying. The issue of lis pendens does not arise. The litigation before the Tribunal is also not sub judice. What is before the court is different from that which is before the Tribunal.”

10. This pronouncement whilst dismissing the appellants appeal gave this tribunal the liberty to proceed with the matter at hand.
11. In an attempt to proceed the parties filed a stay of proceedings to await the determination of the court in Civil Appeal No. 293 of 2016.
12. I wish to note from the onset that the ordinary approach is to seek a stay of proceedings at the High Court or Court of Appeal and serve the same upon the tribunal however this is not the case in this instance I have been moved to stay my own proceedings and the question of jurisdiction has been raised I believe section 12(1) has been couched in very general terms and read together with the preamble of this Act gives the tribunal powers to protect tenants and any incidental matter thereto. It is on this ground that I hold that the tribunal is not precluded from staying its own proceedings with good reasons and in the interest of justice.
13. More particular, my attention has been drawn to the submissions of the tenant regarding E216 of 2021 which is an appeal on my Jurisdiction and they state that when it came for hearing the judge took the same out to avoid embarrassment and await the decision in E293 of 2016. Whilst no much information has been provided in the pleadings I undertook in a casual check on the KLR and here I came across again another decision of the court in Civil Appeal No. 293 of 2016 on July 8, 2022 where the Judges dealt with issue of consolidation and in Paragraph 19, they stated and I quote;

Given that the appeals concern two disparate disputes and arise for two separate and distinct judgements, delivered by two different judges, we consider that it would neither be prudent nor efficacious to consolidate the two appeals, more particularly because, the earlier appeal had been finalized having been heard on merits, while the other two continues to await the



hearing of an appeal on jurisdictional question, as the merits of the dispute in the BPRT continue to remain outstanding. Our view is that the interest of justice would be better served by the expeditious, but separate hearing and determination of the two appeals, more so because, Civil Appeal No. 293 of 2016 is a very old appeal, and because the longer Civil Appeal No. E216 of 2021 continues to await determination of the appeal by this court means The longer the parties will have to await the hearing and determination of the dispute in the bprrt on its merits.

14. The upshot is that I am inclined to rely on the two averments of the High Court and the Court of Appeal to stay my proceedings for good order and avoid a waste of judicial time should the appeal succeed.
15. I am guided by the argument for lack of jurisdiction but not persuaded by it. I believe that the Tribunal has wide discretion on matters Tenant/Landlord. That said, I find the reasons to stay I have mentioned above solid.

E. Orders

16. Having made the above analysis, the upshot is that the Application dated June 22, 2023 is allowed.
 - a. No order as to costs.
 - b. Leave to appeal granted.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. MUMA THIS 6TH DAY OF OCTOBER 2023.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

