



**Obati v Ndung' & another (Tribunal Case E341 of 2023)  
[2023] KEBPRT 643 (KLR) (Commercial and Tax) (27 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 643 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
COMMERCIAL AND TAX  
TRIBUNAL CASE E341 OF 2023  
A MUMA, AG. CHAIR  
OCTOBER 27, 2023**

**BETWEEN**

**JULIUS OBATI ..... APPLICANT**

**AND**

**ELIAS NJOROGUE NDUNG'U ..... 1<sup>ST</sup> RESPONDENT**

**MAUMA AGENCY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A. Parties & Their Representatives**

1. The applicant, Simon Njenga is the tenant occupying the premises located at Nairobi, Ruaraka that is the subject matter of the present suit. (hereinafter “the tenant”).
2. The applicant appears in person in these proceedings.
3. The 1<sup>st</sup> respondent (hereinafter “the landlord”) herein is the Landlord of the Premises that is the subject matter of the present suit.
4. The 2<sup>nd</sup> respondent (hereinafter “the agent”) is the agent of the landlord and manages the suit premises that is subject of this present suit.
5. The respondents are represented by the Firm of Matwere Asiyo & Co Advocates (r\_matwere@yahoo.com).

**B. Dispute Background**

6. On March 31, 2023, the tenant filed a reference and an application seeking several orders including; that the Court be pleased to certify the matter of utmost urgency, and to restrain the respondents from



- evicting, harassing and intimidating him pending the hearing of the hearing and determination of the suit.
7. The tenant also sought orders restraining the respondents from interfering, tampering, disconnecting electricity power and water supply and generally interfering with his quiet possession and lawful enjoyment of the suit premises.
  8. The court, having considered the tenant's reference and application, issued interim orders dated April 6, 2023 certifying the matter as urgent and restraining the landlord and/or his agents, servants and employees from unlawfully intercepting and interfering with whatsoever with the tenant's quiet occupation and lawful enjoyment of the suit premises pending the hearing of the application inter-partes.
  9. Further, the court ordered that the tenant serve the respondents for hearing on May 18, 2023 and to pay rent for April and May before the said hearing date and subsequently every month as agreed.
  10. During the hearing on May 18, 2023, the tenant stated in Court that the landlord had requested to settle the matter. However, the landlord did not appear to confirm the same. Consequently, the Court issued a date for further hearing.
  11. On July 21, 2023, the landlords filed an application seeking to set aside and/or vacate the order of the Court dated April 6, 2023 on the grounds contained in the Supporting Affidavit of Martin Muriuki Maitima.

### **C. Claim And Defence**

12. In the Reference and the application both dated March 31, 2023, the tenant claims that the respondents have been interfering with his quiet enjoyment of the suit premises by continually harassing and threatening to evicting him and interfering with electricity power.
13. The tenant states that the threats of eviction have persisted despite his rent payments being up to date and investing heavily in the suit premises by renovating them in the past years.
14. It is the landlords case that the tenant had failed to serve the hearing notice upon him and that he had failed to disclose to the Court that he had previously filed a BPRT E836 of 2022 which was thrown out for lack of jurisdiction.
15. The landlord states that in the BPRT E836 of 2022, the Court established through a site visit conducted by Ms. Susan Oywa that the tenant had converted the suit premises into his residence and hence, this court lacks jurisdiction to hear and determine this matter.

### **D. Issues For Determination**

16. It is the contention of this tribunal that the sole issue that falls for determination is:

Whether this Court has jurisdiction to hear and determine this matter

### **E. Analysis Of The Law**

17. Jurisdiction is everything and once it is challenged, a determination thereon should be made before the tribunal can proceed further with the disposal of any matter thereto.



18. The jurisdiction of this court is governed by the [Landlord and Tenant Shops Hotels and Catering Establishments Act](#) cap 301. The preamble to the Act states that:
- “It is an Act of Parliament to make provisions 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.”
19. Premises under the protection of this Court are those let out for the sole purpose of conducting business therein and in particular, shops, hotels and catering establishments as defined under section 2 of cap 301.
20. I have perused the documents filed before this Court and found that this matter has been heard and determined by this very honorable court in Tribunal Case No. E836 of 2022. In the said matter, the Court ordered that an inspection be conducted to determine the status of the suit premises to establish whether it had the jurisdiction to hear and determine the matter.
21. Upon evaluation of the said report the Court established that the Tenant had in deed converted the suit premises into a residential house. Consequently, the tenant’s reference and application dated September 17, 2023 were dismissed on February 8, 2023 for want of jurisdiction.
22. The matter before this Court relates to the same subject matter and is between the same parties as those in Tribunal Case No. E836 of 2022, making it *res judicata* for the reason that the same has been heard and determined by this very honorable Court.
23. In finding that this matter is *res judicata*, I am guided by section 7 of the [Civil Procedure Act](#) which states:
- “No court shall try any suit in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”
24. I am further guided by decision of the Supreme Court of Kenya in the case of [John Florence Maritime Services Limited & another v. Cabinet Secretary, transport and infrastructure & 3 others](#) (2021) eKLR where it was held as follows: -
- “The doctrine of *res judicata*, in effect, allows a litigant only one bite at the cherry. It prevents a litigant or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits which would ordinarily clog the courts apart from occasioning unnecessary costs to the parties and it ensures that litigation comes to an end and the verdict duly translates into fruits for one party and liability for another conclusively”.
25. It is trite law that where want of jurisdiction is demonstrated not to exist, the Court has no option but to down its tools and proceed no further. In the circumstances, this Court does not have jurisdiction to hear and determine the matter.



## **F. Determination**

26. The upshot is that the tenant's Reference and Notice of Motion Application dated March 31, 2023 be and is hereby dismissed in the following terms:
- a. The landlord can obtain vacant possession with the assistance of OCS Ruaraka Police Station if tenant doesn't vacate within the next 15 days.
  - b. Costs assessed at Kshs. 20,000 to the landlord.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. A. MUMA THIS 27<sup>TH</sup> DAY OF OCTOBER 2023 IN THE PRESENCE OF MATWERE FOR THE LANDLORD AND THE TENANT IN PERSON.**

**HON A. MUMA**

**AG CHAIR/MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

