



**Kiragu & 3 others v Kimonjo Family Company & Partners Limited; Waitathu
Clan (Suing Through Chairman & Secretary John Irungu Maina & Peter
Thuna Njoroge) & another (Interested Parties) (Tribunal Case 19 of 2019)
[2023] KEBPRT 342 (KLR) (Commercial & Admiralty) (24 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 342 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
COMMERCIAL AND ADMIRALTY
TRIBUNAL CASE 19 OF 2019
A MUMA, VICE CHAIR
MAY 24, 2023**

BETWEEN

**DAVID MUIRURI KIRAGU 1ST TENANT
MUGO GICHOMO 2ND TENANT
IRUNGU NDIRANGU 3RD TENANT
WANGARI MUKUHA 4TH TENANT**

AND

KIMONJO FAMILY COMPANY & PARTNERS LIMITED LANDLORD

AND

**WAITATHU CLAN (SUING THROUGH CHAIRMAN & SECRETARY JOHN
IRUNGU MAINA & PETER THUNA NJOROGE) INTERESTED PARTY
KAHUHU CLAN (SUING THROUGH CHAIRMAN & SECRETARY SAMUEL
MAINA MUGO & MUCHIRI WAITHATHU) INTERESTED PARTY**

RULING

Parties And Representatives

1. The tenants are the occupants of the suit premises known as plot No 12/sub loc/1/1221/(26A) 46 located at Gakera Market, Kangema within Murang'a county.
2. The tenants are represented by the firm of SK Advocates.



3. The family sued as the landlord herein is represented by Jason Mwangi who allegedly is one of the directors of the landlord company of the suit premises.
4. Jason Mwangi is represented by R.M Kimani & Co Advocates.
5. The 1st and 2nd interested parties are the registered proprietors/rightful owners of the premises that are the subject matter of the present suit and the adjoining premises respectively and therefore responsible for performing the duties and obligations of the landlord in the same vein.
6. Both the 1st and 2nd interested parties are represented by Kaweru & Co Advocates.

Dispute Background

7. On June 26, 2019, the alleged landlord, Jason Mwangi issued a landlord's notice to terminate or alter the terms of tenancy to the tenants herein on grounds that the tenants have defaulted in paying rent for a period of three months after such rent has become due and payable. The said notice was issued pursuant to section 4(2) of [Cap 301](#), Laws of Kenya.
8. Subsequently, *vide* a reference dated August 20, 2019, the tenants moved this tribunal opposing the notice of termination of tenancy issued by Kimonjo Family Company & Partners Limited.

The Tenants' Case

9. The tenants' case is that they are legal occupants of the suit premises and the subject of their complaint is harassment from Kimonjo Family & Partners Limited.

The Landlord's Case

10. The landlord filed an affidavit sworn by Jason Mwangi Maina on December 5, 2019 who swore that he is one of the Directors of Kimonjo Family Company & Partners Limited. He swore that the notice issued by the landlord was in respect of plot No Loc 12/Sub Loc 1/1221/26 and the reason for termination of the tenants' tenancy was non-payment of rent.
11. He further swore that the suit property was allocated to Kimonjo Family on February 16, 1963 and that the civil case No 32 of 1998 in Kangema Law Courts revealed that the landlord is the rightful owner/registered proprietor of the suit land No 26 Gakira Market.
12. Jason Mwangi further averred that the tenants ignored the notice to pay rent to the landlord which culminated to the issuing of the termination notice which is the subject of the reference herein and that if the tenants are not paying rent to the landlord even after notice has been issued to them, they should vacate the premises.

The Interested Parties' Case

13. The interested parties filed affidavits sworn by Samuel Maina Mugo and John Irungu Maina on February 3, 2020. They swore that they were the chairpersons of Kahuhu and Waitathu's Clans respectively of the Kimonjo Family Company and Partners Limited.
14. They further swore the suit premises was registered in the names of Kimonjo Family but in trust for the two clans of Kahuhu and Waitathu and that Kimonjo's family has about 10 clans and only the two had shares in the property.
15. They further averred that in 1998, a legal separation was done where the suit property was mutually subdivided into two as between the owning clans, that an application for subdivision and transfer was



done to the then local government, Kangema Urban Council and the same was approved on September 3, 1998 as per the attached minutes.

16. They also swore that upon subdivision, the former plot No 26 Gakira Market ceased to exist and that the two clans being owners of different plots have rented out and operate on their respective premises independently.
17. They finally swore that the termination notices issued to the respective tenants are incompetent as they make reference to plot No 26 which does not exist. They also attached rates payment receipts and official searches obtained from the County Government of Murang'a, showing that they are the owners of the suit premises.

Analysis And Determination

18. I have given full consideration to the tenants' reference, notice of termination and the rival affidavits. Before I go into the merits of the application, I wish to state that since the jurisdiction of this tribunal was not contested by the parties herein, therefore, the same is considered in the affirmative.
19. In my respectful view, I find that the issues that fall for determination are:
 - a. Who is the rightful owner of the suit premises?
 - b. Whether the notice issued by the landlord is valid.
20. I shall proceed to consider and determine the same as follows:

Who is the rightful owner of the suit premises?

21. Section 107(1) of the [Evidence Act](#) (chapter 80 of the Laws of Kenya), provides:

107.

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

21. There is however the evidential burden that is cast upon any party to prove any particular fact which he desires the court to believe in its existence. Section 109 and 112 of the [Evidence Act](#) provides as follows;

109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.

22. The alleged landlord herein lays his claim over the suit property on the Nyeri High Court Case No 7 of 2009 in which it sought to legitimize the ownership of plot No 26 Gakira Market. It is not in dispute that the said case in Nyeri was dismissed for want of prosecution *vide* a ruling dated October 13, 2016 by Hon Lady Justice Lucy Waithaka.
23. On the other hand, the interested parties have produced records of proceedings of the meeting held by the Special Town Planning, Works, Markets, Public Health and Social Services Committee on August 31, 1998. The said meeting was attended by Wachira Mwangi, the Town Clerk, Wallace Gikonyo,



the Town Treasurer and Pater Kabi the Committee Clerk. In the meeting, the Town Council had a discussion with the Kimonjo Family which is composed of two Clans namely Kahuhu and Waitathu. The Town Council was also curious to know whether Jason Mwangi was a member of the same Clan since he had already converted the Kimonjo Family into a Private Company.

24. It was noted that the suit property was allocated to Kimonjo Family on June 11, 1963 and the first trustees elected on July 22, 1963. In the said meeting, Jason Mwangi admitted that he was neither a shareholder nor a member of the clan after being carefully being questioned by the committee. The committee resolved that the plot be subdivided into two and the two clans to take ownership as follows:
 - i. Waitathu clan to own plot No 26 B
 - ii. Kahuhu Clan to own plot No 26 A
24. The interested parties also produced rate payments of the suit premises and search results by the Murang'a County Government dated November 3, 2016 and November 10, 2016 respectively indicating that the plot No Loc 12/Sub Loc 1/1221/(26A) 46 and plot No Loc 12/Sub Loc 1/1221/(26B) 47 both located at Gakira Market are registered in the names of Waitathu and Kahuhu Self Help Groups respectively.
25. In *Mustafa Abdullahi Omar t/a M Dalmar Trading Company Limited v Jeanette Wanjiru Gatebi & another* [2021] eKLR, this tribunal in addressing the question of the rightful owner of the premise emphasized on the strength of documentary evidence as follows:

“However, on who is the rightful landlord of the suit premises, it is imperative that its determination requires establishment of the person with the rightful responsibilities duly granted either by the owner of the premise or that the person is the owner to the suit premise. No document has been produced before me to show proof of ownership by the tenant neither has the said Mary Gakibe been added as an interested party in this course.”
26. This subdivision is further confirmed by the landlords searches which appear current but are in the names of parties not enjoined in this suit and neither do they appear anywhere and as such are of no value in guiding this tribunal.
27. I have been referred to an order by Hon ELkindy in SRMCC No 32 Of 1998 dated June 5, 2001 declaring plot 26 to be lawfully owned by the landlords but no such plot exists.
28. In view of the foregoing, in the absence of any believable evidence from the alleged landlord, and on a balance of probability I find that the interested parties appear to be the are the rightful owners of the suit premises unless determined otherwise in a forum with the jurisdiction to do so

Whether the notice issued by the landlord is valid

29. Having found that the interested parties are the rightful owners of the suit premises, I therefore find no validity in the notice of termination of tenancy issued by the self-installed landlord on June 26, 2019.

Determination

30. In the upshot, the following orders shall abide:
 - a. The notice of termination of tenancy issued on June 26, 2019 is invalid.
 - b. The tenants shall continue in occupancy of the suit premises with continued payment of their rent obligations to the interested parties.



- c. An order is hereby issued against Jason Mwangi restraining him, his agents, servants or any other person acting on his behalf from demanding rent payment from the tenants, harassing the tenants or in any way dealing with the suit premises.
- d. Each Party to bear their own costs.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 24TH DAY OF MAY 2023 IN THE ABSENCE OF THE TENANT AND KIMANI FOR THE LANDLORD.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

