



**Kanini & another v Taiti & another (Tribunal Case E002 of 2024)
[2024] KEBPRT 1619 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1619 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E002 OF 2024
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
NOVEMBER 15, 2024**

BETWEEN

SAMMY MWANGI KANINI 1ST APPLICANT

MARGARET WANJIRU KANINI 2ND APPLICANT

AND

SIMON W TAITI 1ST RESPONDENT

MATOSHA EMPIRE (K) LTD 2ND RESPONDENT

RULING

A. Dispute Background

1. The 1st tenant/applicant moved this Tribunal vide a motion dated 10th June 2024 seeking for stay of the order of this Tribunal given on 24/5/2024. He further seeks for variation, rescission, review and/or setting aside of the said orders and for injunction against the Respondents from interfering with his occupation of the suit premises on Plot No. Aguthi/Gatitu/667/149.
2. The application is supported by the affidavit of the 1st tenant of even date and the grounds on the face of the application wherein it is deposed that the orders of 24/05/2024 are prejudicial to the tenant and ought to be varied, rescinded, reviewed and/or set aside and the parties to litigate their complaints at the Tribunal.
3. He also prayed for stay of the orders of 24/05/2024 pending hearing of the application stating that the Respondents will not suffer any prejudice if the application is heard and determined as he has always abided by the tenancy and paid rent wherever it falls due and that he was not in rent arrears.
4. The Respondents are accused of appearing before this Honorable Tribunal and obtaining orders on 24th May, 2024 following the ruling delivered on 18/5/2024 which was served on 8/6/2026 with



- a covering letter from Matosha Empire (k) Limited dated 30/05/2024 with a threat to evict the Applicant within 7 days.
5. The 1st tenant deposes that he is forced to appeal for protection against the adverse threat to evict issued upon him on 8th June, 2024 by the Respondents as there is no order issued by the honorable Tribunal pending the hearing of the application.
 6. He deposes that it came as shock that the Respondents have not approached the Honorable Tribunal to obtain orders to evict him through Matosha Empire (K) Limited.
 7. He contends that the Respondents are forum shopping to cause an illegal eviction and it is only fair for both parties to be heard and judgement be given on merit.
 8. He therefore pleads for a chance to be heard as he believes that the ruling delivered on 18/5/2024 was as a result of misrepresentation by his lawyer who might have failed to disclose material facts of the case and that the Landlord/Respondent having been driven with malice and without using the right procedure of the law caused a defective notice to be issued and wanted to cause an illegal eviction on them yet there were no rent arrears.
 9. As no other tenant had been issued with the notice to vacate, the same is discriminatory and meant to settle personal scores. The purported renovations are intended to gear his vacation from the premises which is in good condition and well maintained.
 10. He deposes that he had not reported any need for renovations and throughout the hearing of this case, there was no evidence of inspection report carried out by any valuation officer or firm nor by an officer of the Tribunal to confirm the status of the said premises.
 11. He therefore seeks to be allowed to continue staying in the suit premises and that he be allowed to make the monthly payments as usual or at the Tribunal until the determination of the application.
 12. The application is opposed through the replying affidavit of Catherine Karimi Wambugu sworn on 24th June 2024 wherein she deposes that the Landlord/Respondent duly served a notice dated 7th November 2023 to terminate tenancy with respect to the suit premises and required the Applicants to vacate from and surrender vacant possession of Plot No. Aguthi/Gatitu/667/149.
 13. Through an application dated 3rd January 2024, the Applicants contested the validity of the notice to Terminate tenancy aforesaid.
 14. After hearing both parties and weighing the evidence carefully and judiciously, this Tribunal through its ruling delivered on 18th May 2024, confirmed the validity of the Landlord's tenancy notice aforesaid in line with Section 10 of Cap. 301,
 15. In its said ruling, this Tribunal further dismissed the Applicant's application aforesaid with costs to the Respondent.
 16. The Applicants participated throughout the hearing and final delivery of the ruling through their duly appointed Advocates.
 17. It is the Respondent's case that dissatisfaction with a Judgment and/or Order of a judicial body cannot be a ground for seeking stay of execution and that it is trite law that in the event of a dismissal, there is nothing to be stayed as that would be tantamount to reinstating the application through the back door.
 18. The Applicant's tenancy stood terminated and the Respondent herein duly caused a notice to vacate the premises the subject of the tenancy to be served upon the Applicant's herein.



19. The Applicants' assertions in paragraphs 15, 16 and 17 of the supporting Affidavit by Sammy Mwangi Kanini are immaterial and of no relevance to the instant Application. In any event, the said arguments had been raised in the Reference herein and the Application dated 3rd January 2024 which was dismissed as devoid of merit.
 20. By their own pleadings and supporting Affidavit, the Applicants are clear in Paragraphs 3 and 13 of Simon Mwangi Kanini's supporting Affidavit that they seek a fresh hearing before this honorable tribunal, a jurisdiction that the honorable Tribunal, having pronounced itself on the same issues does not have.
 21. In the circumstances, those issues are moot and res judicata. This Tribunal, as a temple of justice, has to balance the interests of both parties and the Respondent should be allowed to enjoy the fruits of his Judgment and Orders of this honorable Tribunal.
 22. We have considered the application, the supporting affidavit, the replying affidavit and annexures thereto together with the submissions of the tenants filed herein and fully agree and adopt the depositions made by the Respondents that the instant application is Res Judicata and that this Tribunal is functus officio in line with the Supreme Court's decision in John Florence Maritime Services Limited & Another Vs Cabinet Secretary For Transport & Infrastructure & 3 Others (2015) eKLR.
 23. We shall not belabor the two doctrines and therefore proceed to dismiss the said application with costs to the Respondents.
 24. The said costs are assessed at Kshs 10,000/=.
- It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15TH NOVEMBER 2024

HON. GAKUHI CHEGE - PANEL - CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

HON. JOYCE AKINYI OSODO - MEMBER

In the presence of: Magua for the tenant

Maweu for the respondents

