



**Kohli v Bakari & 2 others (Tribunal Case E011 & E053 of 2023 & E076 of 2021  
(Consolidated)) [2024] KEBPRT 407 (KLR) (19 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 407 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E011 & E053 OF 2023 & E076 OF 2021 (CONSOLIDATED)  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
APRIL 19, 2024**

**BETWEEN**

**SHANVED RAMNATH KOHLI ..... TENANT**

**AND**

**IBRAHIM LARRY BAKARI ..... 1<sup>ST</sup> LANDLORD**

**ABDUL BAKARI JUMA ..... 2<sup>ND</sup> LANDLORD**

**ABDUL RAHMAN BAKARI ..... 3<sup>RD</sup> LANDLORD**

**RULING**

1. Before us is an application dated 18<sup>th</sup> January 2024 in which the Landlords are seeking: -
  - i. That this Tribunal be pleased to vary the Mediation Agreement/Order adopted by the Court on the 12<sup>th</sup> day of September 2023.
  - ii. That this Court be pleased to allow the Respondents/Landlords to liquidate the sum of Kshs 2,000,000/= (Two Million) owed to the Tenant in Installments of Kshs 500,000/= (Five Hundred Thousand) i.e. Four Equal Monthly Installments until payment in full.
  - iii. That each Party bears its own Costs of the Application.
2. The application is based on the following grounds:-
  - a. On 8<sup>th</sup> day of September 2023, the Respondents/Landlords and the Tenant herein entered into a Mediation Agreement in which the Respondents agreed to pay the Tenant Kshs 2,000,000/= (Two Million) by December 2023.
  - b. The said Mediation Agreement was adopted as an order of the Court.



- c. The Landlords were to liquidate one of the assets comprising the Estate of their late father in order to settle the Mediation Agreement since the premises in dispute is an asset belonging to their late father.
  - d. That unfortunately, once succession proceedings were concluded, an appeal was lodged hence the assets could not be disposed off.
3. The application is supported by the joint affidavit of Ibrahim Larry Bakari, Abdul Bakari Juma and Abdul Rahman Bakari sworn on 18<sup>th</sup> January 2024 wherein it is deposed that this matter was resolved through the mediation agreement entered into between the parties which was adopted as an order of this Tribunal. The Mediation Agreement is annexed as “AB-1”.
  4. The Landlords were committed to paying the Tenant a sum of Kshs 2,000,000/= by December 2023 which they failed to do. The Tenant declined to accept a sum of Kshs 500,000/= offered by the Landlords and insisted on full settlement. The Landlords are therefore seeking extension of Four months to settle the said amount.
  5. The application is opposed through the replying affidavit of the Tenant sworn on 15<sup>th</sup> February 2024 wherein it is deposed that the consent order referred to by the Applicants was adopted by this Tribunal after a settlement agreement and parties are bound by it.
  6. Consequently, it is deposed that the same cannot be appealed against, varied or set aside by this honorable Tribunal. The Applicants are in the wrong forum.
  7. According to the Tenant, the Applicants entered into the Mediation Agreement while knowing well the responsibilities towards the Respondent and they are estopped from trying to defeat the full implementation of the Mediation settlement and the consent order herein.
  8. According to the Respondent, the amount the Applicants were to compensate him was never to come from the proceeds liquidated from the estate of the Applicants' late father as alleged. The consent order did not concern itself with the source of the funds for compensation.
  9. According to the Respondent, the instant application which is seeking to set aside/vary the consent order of this Tribunal is based on misapprehension of the substance of the application filed in the Magistrate's court for enforcement of the order of this Tribunal marked “SRK 1”.
  10. The said application is intended to vary or set aside the terms of the Mediation Agreement entered into with the Applicants which according to the Respondent is un-procedural in that this Tribunal became functus officio the moment it gave the orders of 12/9/2023. The consent order was clear and timelines were set for compliance and therefore what the Applicants are seeking is variation/setting aside of the said order which is a waste of judicial time and resources.
  11. We are required to determine whether the application ought to be allowed or dismissed. We are also required to determine who is liable to pay costs thereof.
  12. We have considered the application and readily agree with the Respondent's contention that this Tribunal became functus officio upon adoption of the Mediation Agreement entered into between the two parties. The said agreement had a contractual effect and unless fraud, coercion or undue influence is pleaded and proved by the Applicants, it cannot be set aside by this Tribunal in line with the decision in the case of *Flora N Wasike v Destimo Wamboko* (1988) eKLR where it was held as follows;

“It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions



remain to be fulfilled, which are not carried out: see the decision of this court in *JM Mwakio v Kenya Commercial Bank Ltd* Civil Appeals 28 of 1982 and 69 of 1983. In *Purcell v F C Trigell Ltd* [1970] 2 All ER 671, Winn LJ said at 676;

“It seems to me that, if a consent order is to be set aside, it can really only be set aside on ground which would justify the setting aside of a contract entered into with knowledge of the material matters by legally competent persons, and I see no suggestion here that any matter that occurred would justify the setting aside or rectification of this order looked at as a contract.”

13. Secondly, this Tribunal does not execute its own orders in view of Section 14(1) of [Cap. 301](#), Laws of Kenya which provides as follows:-

‘(1) A duly certified copy of any determination or order of a Tribunal may be filed in a competent subordinate court of the first class by any party to the proceedings before such Tribunal or by the Tribunal, and on such copy being filed and notice thereof being served on the Tribunal by the party filing the same such determination or order may, subject to any right of appeal conferred by or under this Act, be enforced as a decree of the court.’

14. In view of the foregoing observations, the application before us is a candidate for dismissal.
15. As regards costs, the same are at our discretion under Section 12(1)(k) of [Cap.301](#) but always follow the event unless for good reasons otherwise ordered. We have no reason to deny costs to the Respondent being the successful party.
16. In conclusion, the following orders commend to us in this matter;-
- a. The Landlords’ application dated 18<sup>th</sup> January 2024 is hereby dismissed with costs.
  - b. The Tenant’s costs of the application are assessed at Kshs 10,000/=.

It is so ordered.

**DATED, SIGNED & VIRTUALLY DELIVERED THIS 19TH DAY OF APRIL 2024**

**HON. GAKUHI CHEGE**

**PANEL CHAIRPERSON**

**HON. JOYCE A OSODO**

**PANEL MEMBER**

In the absence of parties

