



Njoroge & 14 others (T/A Geoan Investments) v Raphael Muendo Kathuku t/a Keystone Services; Isaac Musila Mutiso t/a Silverline Auctioneers (Auctioneer); Musili & 2 others (Landlord) (Tribunal Case 1085 of 2019) [2024] KEBPRT 1071 (KLR) (24 July 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1071 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 1085 OF 2019
CN MUGAMBI, CHAIR
JULY 24, 2024**

BETWEEN

JOSHUA MWANGI NJOROGHE 1ST TENANT

**JECTONE OCHIENG OLENYO & 13 OTHERS & 13 OTHERS & 13 OTHERS &
13 OTHERS 2ND TENANT**

T/A GEOAN INVESTMENTS

AND

RAPHAEL MUENDO KATHUKU T/A KEYSTONE SERVICES AGENT

AND

ISAAC MUSILA MUTISO T/A SILVERLINE AUCTIONEERS AUCTIONEER

AND

LOISE MWIA MUSILI LANDLORD

JOSHUA KANYOLE MUSILI LANDLORD

JOSEPH MALOMBE MUSILI LANDLORD

RULING

Introduction

1. The Landlord's Application dated 18.04.2024 seeks the following orders;-
 - a. That the interim orders issued by the Tribunal on 8.11.2019 and any other interim orders issued in this matter be set aside and/or discharged.
 - b. That this matter be dismissed with costs for want of prosecution.



- c. That the Respondents, their subtenants and/or servants be forcefully evicted from the premises known as SSS 5/52 Thika Municipality.
- d. That the eviction be carried out by a duly licensed auctioneer.
- e. That the Landlord's notice to terminate dated 14.12.2023 be deemed to have taken effect.

The Landlord's depositions

- 2. The affidavit of Ms. Mwia Musili the 1st Landlord sworn on 18.04.2024 may be summarized as follows:-
 - a. That this matter has been pending with interim orders since the year 2019 when it was filed.
 - b. That the tenancy agreement in this matter expired in the year 2022 and it was never renewed.
 - c. That the Tenants have failed to give vacant possession of the premises to the Landlords citing the pendency of this suit.
 - d. That the Landlords notice to terminate tenancy dated 14.12.2023 effectively terminated the tenancy on 1.3.2024 as no reference in opposition to the said notice was filed.
 - e. That the premises herein was under distribution vide High court Succession Cause Number 14 of 2019, Kiambu and on 23.10.2023, the High court distributed the same among the beneficiaries.
 - f. That the continued unlawful occupation of the suit premises by the Tenants has hampered the execution of the High court order on distribution, more so to beneficiaries who are not party to this suit.
 - g. That this matter has been overtaken by events and there is nothing pending for distribution.

The Respondent's/Tenant's depositions

- 3. The Replying affidavit of Mr. Jectone Ochieng Olenyo sworn on 21.05.2024 may be summarized as follows:-
 - a. That he filed the instant suit against the Landlords seeking protection as the Landlords had intimated that they would evict him.
 - b. That there was a pending Succession Cause in regard to the suit property which had not been distributed to the beneficiaries and it was crucial that the Succession proceedings be finalized before this matter proceeds.
 - c. That the Succession matter was concluded in the year 2023.
 - d. That the Applicants dragged the 1st Respondent to the Succession Cause which made him to defend his position though he had an existing order.
 - e. That the 1st Respondent has expended costs in defending the Succession Cause.
 - f. That the 1st Respondent feels entitled to proceed with this matter as the reason for not prosecuting the same was the Succession Cause which has now been finalized.
 - g. That if the suit is dismissed, the 1st Respondent will have been condemned unheard.
 - h. That the 1st Respondent is willing to abide by the directions of the court for the effective disposal of the suit.



Analysis and determination

4. The Applicants in this matter are basically seeking orders that the suit herein be dismissed for want of prosecution and that the Tenants be evicted from the suit premises as their tenancy has expired.
5. I do note that the Applicants/Landlords have introduced in this Application a notice to terminate tenancy which they intend to prosecute together with the dismissal of the suit. I do not think this is the proper way to enforce the notice as it was not part of the suit sought to be dismissed for want of prosecution. The suit the 1st Landlord seeks to have dismissed for want of prosecution is the one initiated by the Reference by the Tenant to the Tribunal dated 31.10.2019, where the Tenants sought the following intervention; -

“We therefore seek urgent intervention by this Honourable Tribunal that Keystone Services cease with effect immediately, instructions to the auctioneers in any manner of ongoing or intentions whatsoever of proclamation, attachment and distraint upon the business premises located on SSS 5/52 Thika Municipality.”

6. It is my view therefore that the enforcement of the notice to terminate tenancy cannot be enforced by introducing it at the tail end of these proceedings when it does not form part of the suit sought to be dismissed.
7. The Landlords main concern is that this matter has been pending in court since 2019 and the Tenants have been enjoying interim orders since then. It is the Applicants case that the tenancy between the parties expired and the suit property has been distributed by a Succession Cause vide Kiambu Succession Cause No. 14 of 2019. Both parties are in agreement that the suit property has been distributed by the Succession Cause.
8. The Tenant/ 1st Respondent has deposed in his affidavit that he was not able to prosecute this case due to the pendency of the Succession Cause. It has not been explained in what way the Succession Cause hampered the prosecution of this case neither has it even been suggested that the said Succession Cause issued any orders prohibiting the prosecution of this case. Clearly the Tenant is not a beneficiary to the Estate of the deceased in the Succession Cause and his relationship with the suit premises was solely governed by the lease agreement that he had entered into. In the circumstances, I do not find that the pendency of the Succession Cause was reason enough for the Tenant/1st Respondent to fail to take any steps to prosecute his case.
9. This matter was last in court in the year 2020 and specifically, on 13.3.2020. since then, the Tenant/1st Applicant did not take any steps to prosecute the same until he was woken up from that slumber by the Landlords Application dated 18.04.2024. I find that no good reason has been given for that delay which in my view is unreasonable and prejudicial to the Landlords.
10. The lease agreement between the parties dated 06.07.2016 was for a period of five years and therefore terminated sometimes in the year 2022. The 1st Landlord has deposed that the same has never been renewed and there may therefore be some merit in the Landlords argument that this suit may be spent.
11. The certificate of confirmation of grant issued at the High court in Kiambu Succession Cause No. 6 of 2023 formerly Kitui Succession Cause No. 14 of 2019 distributed the suit land amongst beneficiaries of the Estate of the deceased Hezekiah Musili Mulanga, some of whom are not even parties to this dispute. The Tenants claims over the suit premises are not recognized in the said certificate of confirmation. The Tenant's allegations that he incurred expenses/costs in defending the Succession Cause cannot be dealt with in this suit as such costs if any, were to be pursued in the Succession Cause.



12. I am satisfied in the circumstances that, the Tenant failed to prosecute his Reference to the Tribunal dated 13.10.2019 for an inordinately long time and for no valid reason and I therefore dismiss the same for want of prosecution.

Consequently, the orders issued on 8.11.2019 and any other interim orders issued in this matter are hereby discharged.

13. The Landlords will have the costs of this Application and the Reference.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH DAY OF JULY, 2024

HON. CYPRIAN MUGAMBI - CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Ms. Wayimi holding brief for Mr. Waweru for the Respondent and in the absence of the Applicants

