



**Oloo & another v Mwinyi (Tribunal Case E322 of 2022)
[2023] KEBPRT 33 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 33 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E322 OF 2022
GAKUHI CHEGE, VICE CHAIR
FEBRUARY 2, 2023**

BETWEEN

LUKE ODONGO OLOO 1ST APPLICANT

ROSE ACHIENG 2ND APPLICANT

AND

RAMADHAN MWINYI RESPONDENT

RULING

1. The Tenant/Applicant herein has moved this Tribunal by a motion dated September 23, 2022 in which he is seeking that the Tribunal be pleased to stay, review and/or suspend the enforcement and/or execution of the ruling delivered on September 21, 2022 and all consequential process as arising therefrom.
2. According to the Applicant, this Tribunal's ruling of September 21, 2022 aggrieved him as the same did not address or overlooked two issues given that the suit premises was a temporary structure built on a road reserve and vacant possession could not issue as the only notice served by the landlord was one dated July 6, 2021 which was not in the prescribed form.
3. The Applicant contends that he was not a tenant to the landlord herein as there was no proof of payment of rent since the Landlord changed sold and surrendered the suit premises to the Applicant's wife one Chebet Yasmin in October 2021 and could not be paid rent thereafter.
4. Although I have not seen the replying affidavit or any other response to the application before me, I am nevertheless required to exercise my discretion judicially and not capriciously taking into consideration the principles considered in an application for review of court orders.



5. In the case of *National Bank of Kenya Limited vs Ndungu Njau* (1997) eKLR, the Court of Appeal had the following to state:-

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review”.

6. All issues raised in the applicant’s motion were addressed in the ruling of September 21, 2022 and cannot be grounds for review as entertaining them would amount to sitting on appeal against my own decision. This is against the spirit of review espoused in the foregoing court of appeal decision which is binding upon this Tribunal. I refuse the invitation to sit on appeal against my own decision.
7. In the premises, the application dated September 23, 2022 is hereby dismissed with no orders as to costs.

It is so ordered.

RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 2ND DAY OF FEBRUARY 2023.

HON. GAKUHI CHEGE

VICE CHAIR

Business Premises Rent Tribunal

Ruling delivered in the presence of:

Tenant present through wife Yasmin Chebet.

No appearance for the Landlord.

