



**Yusuf & another v Haji; Jillo & another (Interested Parties) (Tribunal Case E881 of 2022) [2023] KEBPRT 22 (KLR) (Civ) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 22 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E881 OF 2022  
A MUMA, VICE CHAIR  
FEBRUARY 2, 2023**

**BETWEEN**

**SAHRA KHALIF YUSUF ..... 1<sup>ST</sup> APPLICANT**

**ABDIAZIZ BISHAR HAPI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**FATUMA MOHAMED HAJI ..... LANDLORD**

**AND**

**KORE NASIRI JILLO ..... INTERESTED PARTY**

**ABC BANK ..... INTERESTED PARTY**

**RULING**

**A. PARTIES AND REPRESENTATIVES**

1. The Applicants Sahra Khalif and Abdiaziz Bishar are the applicants and had rented space on the Suit Property known as Homeland Apartments located on LR No 36/11/48 for the business. (hereinafter known as the ‘tenants’)
2. The firm of Abdullahi & Associates Advocates represent the Tenant/Applicants in this matter.
3. The Respondent Fatuma Mohammed Haji is the alleged Landlord and rented out space for the business in the suit property to the Tenant. (hereinafter the ‘landlord’)
4. The firm of Maingi Musyimi & Associates Advocates represent the Respondent in this matter.



5. Kore Nasiri Jillo is the Interested Party and acquired the property via auction by the 2<sup>nd</sup> Interested Party ABC Bank represented by the firm of Gakunga Advocate from the Landlord . (hereinafter ‘the interested party’)

#### **B. The dispute background**

6. The Landlord and the Tenant entered into a Tenancy Agreement dated June 1, 2021 for a period of four years.
7. The Suit property has since been transferred to the Interested Party through a Sale by Auction. The interested party has threatened to evict the Tenant from the premises due to default in paying rent.
8. In response the Tenant has filed a Reference dated October 7, 2022 opposing the said Notice as well as a Notice of Motion Application dated October 7, 2022 seeking that the Landlord be restrained from interfering with their quiet occupation as well as that the Landlord be restrained from evicting them.

#### **C. The tenant’s claim**

9. The Tenant filed a Reference dated October 7, 2022 seeking to oppose the threats of eviction issued by the Landlord.

#### **D. The interested party’s claim**

10. The Interested Party has filed an application dated 18<sup>th</sup> October 2022 seeking that the Tenants be evicted from the premises and that they grant them vacant possession of the premises.

#### **E. List of issues for determination**

11. It is the contention of this Tribunal that the issues raised for determination are as follows;  
Whether the termination of the Tenancy by the Landlord was valid?

#### **F. Analysis and findings**

Whether the termination Notice issued by the Landlord was valid and Whether there exists a Tenancy Relationship between the Tenant and the 1<sup>st</sup> Interested Party?

12. Section 4(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya provides that;

4(2) landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.

4(4) No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party

13. The above provision requires that before the Landlord can terminate or alter the terms of a controlled tenancy, they must issue a notice of not less than two months to the Tenant.
14. In the present case the Tenant has averred that the Interested Party has issued them with an oral Notice threatening to evict them from the premises.
15. Before the Tribunal can determine the above issue, it is crucial to analyze whether there exists a Tenancy Relationship between the Tenants and the Interested Party.



16. The Interested Party has presented that they are the new owners of the Suit Property. They have annexed proof before this Tribunal in the form of an Agreement for Sale dated December 17, 2021 which shows that the property passed to them from the Landlord through an auction under instructions received from ABC Bank where the property was charged.
17. The Tenant has not opposed the fact that the Interested Party is the new owner of the property. In fact ABC bank joined the suit to buttress the said fact of new ownership that property had indeed changed hands, they have however alleged that they have been up to date with their payment of rent but the same seems to be paid to the old Landlord Fatuma Mohamed Haji.
18. On the issue of Notice there seems to be a statutory notice issued by the Auctioneers to the Landlord on the banks behalf which led to the sale to 1<sup>st</sup> IP one Kore Nasiri Jillo, I find that there being no stay yet on the auction sale by any court and the property right fully changed hands. It is my finding that the 1<sup>st</sup> Interested party is rightfully entitled to the rent proceeds now going to the Landlord Respondent. Further whilst I find the tenants are protected am of the opinion that the main cause of action which is exercise of statutory power of sale how right it was or otherwise is not for this forum to determine.
19. The upshot therefore is that the property having exchanged hands at the fall of the hammer to the Ist Interested Party.

#### **G. ORders**

- a. The Tenants are at liberty to renegotiate new leases with the new owner if the 1<sup>ST</sup> Interested Party is agreeable in the next 30 days from the date of this ruling ie on or before the February 28, 2023.
- b. Failure to which the Tenants Injunction issued on October 4, 2022 stands discharged and the 1<sup>st</sup> Interested Party application dated October 18, 2022 is allowed in terms of prayers 3,4 and 5.
- c. Each party shall bear their own Costs.

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 2ND FEBRUARY 2023 IN THE PRESENCE OF ABDULLAHI FOR THE TENANTS AND GAKUNGA FOR THE 2<sup>ND</sup> INTERESTED PARTY AND IN THE ABSENCE OF THE 1<sup>ST</sup> INTERESTED PARTY.**

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

