



**Rehema v APDK Likoni Furniture (Tribunal Case E041 of 2022)  
[2023] KEBPRT 1297 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1297 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E041 OF 2022  
CN MUGAMBI, CHAIR  
MAY 31, 2023**

**BETWEEN**

**GRACE REHEMA ..... TENANT**

**AND**

**APDK LIKONI FURNITURE ..... LANDLORD**

**RULING**

**Introduction**

1. This Ruling concerns two applications; the tenant's applications dated 5.1.2023 and 11.1.2023. The application dated 11.1.2023 was dealt with by the orders issued by the Tribunal on 24.1.2023. I will therefore deal with the tenant's motion dated 5.1.2023.
2. The tenant's application dated 5.1.2023 seeks orders to the effect that the landlord/Respondent be restrained from in any manner whatsoever interfering with the tenant's peaceful occupation of the suit premises pending the hearing and determination of the suit.
3. The tenant's application is brought on the grounds that; on 5.1.2023, she was served with an illegal and insufficient notice dated 5.1.2023 requiring her to vacate the premises by 6.1.2023. the tenant's application is also hinged on the grounds that on 5.1.2023 when she visited the offices of the landlord, she was served with another notice of termination dated 30.5.2022.

**Is there a suit pending?**

4. The reference filed by the tenant under Section 12(4) of Cap 301 dated 22.2.2022 prayed for the following orders:-
  - a. That a temporary injunction be issued prohibiting any rent increment of business premises known as APDK Likoni Furniture Stall Number 9 pending the hearing and determination of the application herein.



- b. That a temporary injunction do issue prohibiting any rent increment of business premises known as APDK Likoni Furniture Stall Number 09 pending the hearing and determination of the main suit.
  - c. That the OCS Likoni police station to enforce the given orders if there be non-compliance.
5. On 8.4.2022, the Tribunal issued orders of temporary injunction in favour of the tenant and fixed the matter for hearing on 16.5.2022.
6. On 16.5.2022, the Tribunal made the following orders in the presence of counsel for the tenant:-
- a. Any rent increment of business premises known as APDK Likoni Furniture Stall Number 09 is hereby prohibited.
  - b. The officer commanding, Likoni police station to reinforce the given orders if there may be non-compliance.
  - c. Costs of Kshs. 10,000/= against the landlord to be deducted from the rent account.
  - d. Complaint marked as settled.
7. As far as the Tribunal was/is concerned, the reference/complaint filed by the tenant on 22.2.2022 which forms the basis of this suit was settled on 16.5.2022 by the orders of court of the said date.
8. The tenant has not filed any fresh complaint or reference against the tenancy notice she seems to be challenging in her affidavit dated 5.1.2023 filed in this very matter which has already been concluded. As things stand therefore, there is no complaint pending determination and further, there is no reference filed under Section 6(1) of Cap 301 challenging the notice to terminate tenancy, at least not in this file.
9. The tenant seems to be aware of this position when she depones as follows at paragraph 2 of her affidavit sworn on 5.1.2023:-

“That on 16.5.2022, the matter was heard and settled whereby I was awarded costs of Kshs. 10,000/=. Attached herewith and marked as “JJ-1” is a copy of the court order.”

I do not think the orders issued on 16.5.2023 prevented the Respondent in any way from issuing a termination of tenancy notice to the tenant, no, far from it. The tenant is also free to challenge the notice issued to her by the tenant but clearly she cannot make the settled complaint the basis of challenging the said notices. I believe the tribunal proceeded in error from after the orders of 16.5.2023 were issued.

10. Consequently, I do not find any merits in the application as it is my view that the Tribunal is functus officio. In the case of; *Telkom Kenya Ltd. Vs John Ochanda (suing on his behalf and on behalf of 996 former employees of Telkom Kenya Ltd)*, the court of Appeal held as follows on the *functus officio* doctrine:

“Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision therein.

The general rule that final decision of a court cannot be re-opened derives from the decision of the English court of Appeal in *re.st Nazaire Co.* (1879) 12, CR D 88. The basis for it was that the powers to rehear was transferred by the Judicature Acts of the Appellate division.



The rule applied only after the final judgment had been drawn up, issued and entered and was subject to two exceptions.....”

11. The tenant’s complaint in this matter having been finalized, no further proceedings can therefore be taken in this matter. The tenant’s challenge to the alleged notices of termination cannot be determined in these concluded proceedings.
12. Consequently, the tenant’s application dated 5.1.2023 is hereby dismissed with no orders as to costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31<sup>ST</sup> DAY OF MAY 2023**

**HON. CYPRIAN MUGAMBI**

**CHAIRMAN**

**31. 5.2023**

In the presence of;

No appearance by parties

