



**Weda v Anam & another (Tribunal Case 38 of 2018)**  
**[2024] KEBPRT 634 (KLR) (Civ) (26 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 634 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**CIVIL**  
**TRIBUNAL CASE 38 OF 2018**  
**A MUMA, MEMBER**  
**APRIL 26, 2024**

**BETWEEN**

**SAMSON NYAMWAJI WEDA ..... LANDLORD**

**AND**

**STEPHEN ANAM ..... 1<sup>ST</sup> TENANT**

**PHILIP OTIENO ABONDO ..... 2<sup>ND</sup> TENANT**

**RULING**

**A. Parties And Their Representatives**

1. The Applicant, Samson Nyamwaji Weda (the “Landlord”), is the landlord and the proprietor of the suit premises erected on L.R. Number South Sakwa/Barkowino/4140.
2. The Landlord is in person in this matter.
3. The Respondents, Stephen Anam and Philip Otieno Abondo (the “Tenants”), leased the demised premises from the Landlord.
4. The Firm of Onyata and Company Advocates represent the Tenants in this matter.

**B. Dispute Background**

5. The Landlord moved this Tribunal vide an application dated 22<sup>nd</sup> September 2021 seeking that the said application be certified urgent, that the orders of this Tribunal dated 23<sup>rd</sup> June 2021 be vacated as well as the costs of the application be awarded to him.
6. The Tenants opposed the said application, contending that the same is untenable for the reasons given by the Tenants in their Replying Affidavit as well as the written submissions dated 31<sup>st</sup> July 2022.



7. Upon hearing, the Tribunal vide a Ruling dated 1<sup>st</sup> February 2023 upheld the Landlord's reference and application evenly dated 4<sup>th</sup> June 2018 and ordered that:
  - i. The Landlords Reference dated 4/6/2018 is hereby upheld as follows
  - ii. The Head Tenants to handover vacant possession of the premises to the Landlord within 30 days being on or before 28<sup>th</sup> February 2023 after which rent shall be paid to the Landlord;
  - iii. The sub tenants shall hand over vacant possession of the premises back to the Landlord in the next two months i.e on or before end of April 2022. Only if the Landlord so directs; and
  - iv. each party was to bear their own costs.
8. Subsequently, on 27<sup>th</sup> April 2023 the Tenants filed an application seeking orders inter alia that this Tribunal be pleased to review its ruling and orders issued on 1<sup>st</sup> February 2023 in respect of the Landlords Reference in particular the order that the building costs offset the tenants losses in the period when they were out of the building being 27 months from 6<sup>th</sup> July 2020 to May 2023.
9. Furthermore, the Landlord filed a Preliminary Objection dated 1<sup>st</sup> March 2024 seeking dismissal of the Tenant's Application with cost to the Tenants.

#### **C. The Tenants Claim**

10. The Tenants aver that they were dissatisfied with the Tribunal's Ruling delivered on 1<sup>st</sup> February 2023 for reasons that:
  - i. the Tribunal did not properly address the issue of lost rent;
  - ii. at the time of the Orders being issued, the Applicants had not properly claimed the costs of construction of the building as well as the period in which they had been evicted prior to the Orders given on 1<sup>st</sup> February 2024; and
  - iii. the total owed to the former head tenants is Kshs.864,000 in lost net rent at Kshs.32,000 for 27 months.

#### **D. The Landlord's Defence**

11. The Landlord in his Preliminary Objection dated 1<sup>st</sup> March 2024 avers that Tenant's Application lacks merit since he has never been represented by Messr. Onyata & Company Advocates as alleged by the Tenants on the Affidavit dated 27<sup>th</sup> April 2023.
12. Furthermore, the Landlord contends that the Messr. Onyata & Company Advocates cannot be on record for the Landlord and advise the Tenant at the same time since that would be conflict of interest.
13. The Tribunal found no merit in the PO and reserved the matter for a ruling based on the site visit and all materials earlier provided by parties.

#### **E. Issues For Determination.**

14. Having given full consideration to the Tenants' Notice of Motion Application dated 27<sup>th</sup> April 2023 and the Landlord's Preliminary Objection dated 1<sup>st</sup> March 2024, I find that the sole issue that falls for determination is:



## Whether the Tribunal should review its Ruling and orders delivered on 1<sup>st</sup> February 2023?

### F. Analysis And Determination

## Whether the Tribunal should review its Ruling and orders delivered on 1<sup>st</sup> February 2023?

15. Section 80 of the [Civil Procedure Act](#) Cap 21 provides as follows: -

“Any person who considers himself aggrieved—

- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

16. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -

“1.

(1) Any person considering himself aggrieved—

- a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

17. In Republic v Public Procurement Administrative Review Board & 2 others [2018] e KLR it was held:

“Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”



18. Further, in *Pancras T. Swai v Kenya Breweries Limited* [2014] eKLR the Court of Appeal held: -

“Order 44 rule 1 (now Order 45 rule 1 in the 2010 Civil Procedure Rules) gave the trial Court discretionary power to allow review on the three limbs therein stated or “for any sufficient reason...”

19. From the above provisions, it is clear that while Section 80 of the *Civil Procedure Act* grants the court the power to make orders for review, Order 45 of the Civil Procedure Rules sets out the jurisdiction and scope of review by hinging review to discovery of new and important matters or evidence, mistake or error on the face of the record and any other sufficient reason.

20. In the instant case, despite the Tenants having advanced their reasons for seeking orders for review, it is the Tribunal’s contention that their reasons have failed to meet the criteria for a review.

21. On the ground of an account of some mistake or error apparent on the face of the record, the Court in *Zablon Mokua v Solomon M. Choti & 3 others* [2016] eKLR relied on the case of *Chandrakhant Joshibhai Patel v R* [2004] TLR, 218 where the court held that an error stated to be apparent on the face of the record:

“...must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long drawn process of reading on points on which may be conceivably be two opinions.”

22. In the present case, the ‘Tenants’ claims cannot be categorized as an error or mistake apparent on the face of the record. Upon examining the file, it is evident that the Tenants have not provided sufficient evidence to support their assertions regarding lost net rent and the costs of construction. Therefore, raising these concerns is immaterial, especially in the absence of any supporting evidence raised during the subsistence of the suit.

23. Additionally, the Court of Appeal in the case of *Independent Electoral and Boundaries Commission & Ano. v Stephen Mutinda Mule & 3 others* [2014] eKLR which cited with approval the decision of the Supreme Court of Nigeria in *Adetoun Oladeji (NIG) v Nigeria Breweries PLC SC 91/2002* where Adereji, JSC expressed himself thus on the importance and place of pleadings:

“.....it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.....”

24. The failure of the Tenants to adequately claim for the lost net rent and construction costs in their pleadings does not indicate an error by the Tribunal but rather reflects an oversight on the part of the Tenants.

25. This Honorable Tribunal has keenly reviewed the documents on record, and has noted that Landlord presented a BQ of 371,000 which information was confirmed by the Tribunal. However, upon perusal of the record, this Tribunal notes that the Tenants did not raise any claim on the same.

26. Additionally, the Tribunal has failed to locate a receipt or schedule for the lost net rent owed to the Head Tenants. Section 107 of the *Evidence Act* stipulates that anyone seeking a court judgment based on asserted facts must prove the existence of those facts.



27. These facts in addition cannot be classified as new as they were aware of them all along and nothing would have been easier than produce a schedule with an additional prayer for the loss of rent and renovations.
28. Furthermore, there exists no Landlord-Tenant relationship between the parties, since the Tenants have vacated the premises and are no longer in the suit premises.
29. In light of the above, the claims raised by the Tenants fail to meet the grounds laid out under Order 45 of the Civil Procedure Rules.

#### **G. Determination**

30. In the upshot, the Tenant's Application for Review dated 27<sup>th</sup> April 2023 is hereby dismissed. Each party shall bear their own costs.

**HON A. MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**Ruling dated, delivered and signed at Nairobi on this 26th day of April 2024 in the presence of Nyabundi for the Tenants. There was no appearance for the Landlord.**

**HON A. MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

