



**Meeme v Netcom Car Wash & another (Tribunal Case
E1084 of 2023) [2024] KEBPRT 581 (KLR) (16 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 581 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1084 OF 2023
P MAY, MEMBER
APRIL 16, 2024**

BETWEEN

PURITY GAKII MEEME TENANT

AND

NETCOM CAR WASH LANDLORD

AND

**NAZIGI SAVINGS AND CREDIT CO-OPERATIVE SOCIETY
LIMITED RESPONDENT**

RULING

1. The tenants approached the Tribunal by filing the reference dated 1st November, 2023. The tenants in their complaint challenged the notices of termination issued against them for being irregular and illegal. They accused the tenant for harassing them. In order to protect the subject matter of the dispute, the tenants filed an application under certificate seeking orders of temporary injunction against the landlords.
2. The application is premised on the grounds set out on the face of the application and the supporting affidavit. The tenant challenged the validity of the notice of termination issued by the landlord. The tenant therefore sought the intervention of the Tribunal to remain on the demised premises.
3. The application has been opposed through the notice of preliminary objection and the replying affidavit filed by the landlords. The landlord deposed that the present proceedings were an attempt to reopen the dispute which had been concluded by the Environment and Land Court and which no appeal had been preferred. The landlord therefore challenged the jurisdiction of the Tribunal to handle the present proceedings.



4. The jurisdiction of this Honourable Tribunal has been challenged. Practice requires that the Tribunal dispenses with the preliminary objection before it can proceed to merits of the dispute.
5. A Preliminary Objection was described in the *Mukisa Biscuits Manufacturing Co. Ltd... Vs... West End Distributors Ltd* (1969) EA 696 to mean:-

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of Further Sir Charles Nebbold, JA stated that: -

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”.

6. This Tribunal having cited the *Mukisa case* on the description of what constitutes a Preliminary Objection, it is not in doubt that a Preliminary Objection raises pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained from elsewhere or the court is called upon to exercise judicial discretion. Further, in the case of *Quick Enterprises Ltd v Kenya Railways Corporation*, Kisumu HCCC No.22 of 1999, the Court held that: -

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the Court having to result to ascertaining the facts from elsewhere apart from looking at the pleadings.”

7. It is this Tribunal’s opinion that in determining a Preliminary Objection, the tribunal will also take into account that the preliminary objection must stem from the pleadings and raise pure point of law. See the case of; *Avtar Singh Bhamra & Another Vs Oriental Commercial Bank*, Kisumu HCCC No.53 of 2004, where the court held that: -

“A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

8. Before the Tribunal embarks on determining the merit of the notice of preliminary objection, it has to first determine whether what has been raised herein satisfy the ingredients of a Preliminary Objection. As the Tribunal determines whether what the 2nd respondent has filed amounts to a Preliminary Objection or not, it will also be persuaded by the findings in the case of *Oraro Vs Mbaja* (2005) 1KLR 141, where the Court held that: -

“Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence”.

9. In the present circumstances, the Tribunal takes note that the previous litigation did not involve the tenants herein. The pleadings filed do not point at a single instance that the tenants participated in the



- said proceedings. The 2nd respondent has accused the tenant of conniving with the 1st Respondent to institute the present proceedings. The same can only be ascertained during hearing of the complaint.
10. Besides, this being a Preliminary Objection and on the authority of Mukisa Biscuits case, only a pure point of law which does not seek the exercise of judicial discretion may be raised. I find the notice of preliminary objection dated 10th November, 2023 unmeritorious.
 11. I will now delve to the validity of the notice of termination issued by the 1st respondent. The process of terminating controlled tenancy is as provided by section 4 of CAP 301.
 12. The position of the law on the issue of a termination notice is now settled. The Court in Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited, Civil Appeal No. 203 of 1994, stated that: -

“The Act lays down clearly and in detail, the procedure for the termination of a controlled tenancy. Section 4(1) of the Act states in very clear language that a controlled tenancy shall not terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the tenant. The notice must also specify the ground upon which termination is sought. The prescribed notice in Form A also requires the landlord to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice.”
 13. A cursory look at the notice issued reveals that the same was not in the prescribed manner. The tenants have also never been served with any other notice by either of the respondents. I have considered this against the triple requirements for the grant of orders of temporary injunction as set out in the celebrated cases of *Giella v Cassman*. The tenant has proven that they have a prima facie case and stand to suffer irreparable damage.
 14. The upshot of the above is that the tenant’s application dated 1st November, 2023 is allowed with no orders as to costs. Owing to the convoluted nature of the dispute, parties to file and exchange a paginated bundle of documents within 14 days and take a hearing date on priority basis.
 15. Orders to apply to E1085 and E 1087

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF APRIL, 2024.

HON. PATRICIA MAY

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the absence of the parties

