



**Murshal & another v Sena & 2 others (Tribunal Case E050  
(NAKURU) of 2024) [2024] KEBPRT 1187 (KLR) (14 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1187 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E050 (NAKURU) OF 2024  
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER  
AUGUST 14, 2024**

**BETWEEN**

**GULLED HAJIR MURSHAL ..... 1<sup>ST</sup> APPLICANT**

**OSMAN ADEN MUHAMUD ..... 2<sup>ND</sup> APPLICANT**

**AND**

**FELIX KIONA SENA ..... 1<sup>ST</sup> RESPONDENT**

**RICHARD KURENDA SENA ..... 2<sup>ND</sup> RESPONDENT**

**SANJOMU AUCTIONEERS ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**A. Dispute Background**

1. The tenant/applicant moved this Tribunal vide a Reference dated 23<sup>rd</sup> April 2024 under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301, Laws of Kenya with a Complaint that the respondents had threatened to evict them by instructing auctioneers to levy distress for non-existing rent arrears contrary to Cap 301 Laws of Kenya.
2. The tenants/applicants filed a Notice of Motion under a certificate of urgency dated 23<sup>rd</sup> April 2024 seeking for the following orders; -
  - i. That the application be certified urgent
  - ii. That Sanjomu Auctioneers or any other auctioneers be restrained from proclaiming, attaching or selling the tenant's tools of trade pending hearing and determination of the case.
  - iii. That the respondents be ordered to allow the tenants unlimited access to the business premises pending hearing and determination of the case.



- iv. That the respondents be restrained from letting out the business premises to another tenant pending hearing and determination of the case.
  - v. That the respondents be restrained from interfering in any manner with the tenants' tenancy at the suit premises at Narok Plot No. 144, Block 4 pending hearing and determination of the case.
  - vi. That O.C.S Narok Police Station do assist in compliance with the orders.
  - vii. That the costs of the application be provided for.
3. The tenants/applicants simultaneously filed a supporting affidavit of even date in which they depose as follows; -
- i. That the respondents have threatened to evict them yet they are not their landlords, by instructing auctioneers to proclaim, attach and sell the tools of trade hence evicting them due to non-existent rent arrears. A copy of the proclamation notice is annexed as "JHM-1".
  - ii. That the monthly rent payable is KES. 50,000.
  - iii. That for the period claimed by the landlord which is from January 2024 to April 2024, the tenants had paid rent whose evidence they had. The evidence included KES. 133,150 by cheque and KES. 90,000 as advance payment, totaling KES. 223,150 covering 4 months' rent. A copy of the cheque is annexed "JHM-2".
  - iv. That the landlord's claim of KES. 380,000 is null and void.
  - v. That the total rent from January to April is KES. 200,000.
  - vi. That the landlord and tenant have maintained a good relationship for the past 7 years with recorded statements from the landlord praising the tenant's punctuality in rent payment.
  - vii. That the dispute arose in October 2023, 3 months before expiration of the tenancy agreement, when the landlord requested KES. 1,500,000 to extend the agreement.
  - viii. That the tenants and landlord had a verbal agreement for the them to construct the premises, whose expenses totaled to KES. 1,600,000 of which the landlord refunded KES. 500,000 and still owes the tenants a balance of KES. 1,100,000.
  - ix. That the respondents have threatened to evict the tenants by use of physical means.
4. On 25<sup>th</sup> April 2024, the tribunal granted interim orders of injunction against the landlords pending the hearing of the application inter-partes.
5. The tenants filed a further affidavit dated 16<sup>th</sup> May 2024 in which they depose that through a letter dated 16<sup>th</sup> May 2024, the tenants requested the court to postpone the matter for 5 months to enable the 1<sup>st</sup> applicant/tenant to seek medication abroad. A copy of the letter and medical report are attached.
6. At the court hearing of 20<sup>th</sup> May 2024, Counsel for the landlord stated that he had not been served with the application herein and the court directed that they be served and the landlord was granted leave to respond after which the parties were directed to file and serve their written submissions.
7. The respondents filed a replying affidavit dated 7<sup>th</sup> June 2024 in which the landlords depose that they were not served with the application and that they were responding to the tenants' further affidavit by deposing follows; -



- i. That the landlords did instruct the auctioneers to evict, proclaim, attach and sell the tenants' goods on the basis that they have not been paying rent and the amount accrued is KES. 650,000.
  - ii. That it is untrue that the parties are in good terms.
  - iii. That this tribunal heard, determined and concluded the matter between the same parties on 11<sup>th</sup> April 2024 where the tribunal pronounced itself that it lacked jurisdiction. A copy of the said ruling is annexed as "FKS-1".
  - iv. That the 1<sup>st</sup> applicant by seeking to go abroad for treatment is a strategy to defeat the ends of justice at the expense of the landlords as the 1<sup>st</sup> applicant is in good health and is running the business at the suit premises every day.
  - v. That the agreement had expired on 16<sup>th</sup> January 2024 and therefore, the applicants are illegally at the suit premises and should vacate immediately. A copy of the tenancy agreement is attached.
  - vi. That the applicants have failed to maintain the suit premises and having been inspected by the Public Health Officers, Narok County, the building was found to be inhabitable therefore calling for renovations thus informing the basis of the landlords' move to terminate tenancy. A copy of the letter is annexed as "FKS".
8. Both parties filed their written submissions with the respondents filing theirs dated 26<sup>th</sup> July 2024 and the tenants filing theirs dated 2<sup>nd</sup> August 2024. We shall consider both submissions as we deal with the issues for determination.

#### **B. Issues for determination**

9. The following are the issues for determination; -
- a. Whether the tribunal has jurisdiction to hear and determine this matter.
  - b. Whether the tenants are entitled to the orders sought in the application dated 23<sup>rd</sup> April 2024.
  - c. Who shall bear the costs of the application?

#### **Issue (a) Whether the tribunal has jurisdiction to hear and determine this matter.**

10. The respondents herein have raised the issue of jurisdiction in their replying affidavit dated 7<sup>th</sup> June 2024 as well as in their written submissions. They have sworn in their affidavit that the matter herein has already been dealt with in a ruling dated 11<sup>th</sup> April 2024 in BPRT/E231/2023 between the same parties, where the tribunal pronounced itself that it lacked jurisdiction and that the issues are Res-judicata and Res-subjudice and offended Section 7 of the [Civil Procedure Act](#).
11. We have perused the copy of the said ruling which is annexed to the landlords' replying affidavit but the same is in the form of an extracted order from the said ruling and we are therefore unable to verify whether the matters dealt with in the ruling therein are similar with what is before us. Consequently, we cannot conclude that the matter raised herein has already been dealt with.
12. Based on the above analysis and evidence of rent payment by the tenants even after expiration of the tenancy agreement, we find that this is a controlled tenancy under Cap 301 laws of Kenya and hence this tribunal has jurisdiction to hear and determine the matter.



**Issue (b) Whether the tenants are entitled to the orders sought in the application dated 23<sup>rd</sup> April 2024.**

13. The tenants approached this tribunal seeking that the landlords be restrained from levying distress, letting out the suit premises to another tenant and from interfering with the tenants and/or evicting the tenants from the suit premises.
14. The tenants in their written submissions have stated that they have no rent arrears and the landlords' threat to levy distress is premature and unwarranted.
15. In addition, the tenants have submitted that they have demonstrated that they are not in any rent arrears by annexing a breakdown of rent payments made to the landlords as opposed to the landlords who have not attached any proof of payment received from the tenants.
16. The tenants in their submissions also state that the landlord owed them KES. 233,150 which consists of KES. 133,150 and KES. 90,000 which the landlord refunded by cheque. That due to the 2<sup>nd</sup> applicant being abroad, the 1<sup>st</sup> applicant could not cash out the said cheques as the bank demanded that both applicants must be available. That in December 2023 when the 2<sup>nd</sup> applicant arrived back in the country, the cheques were outdated and on 5<sup>th</sup> January 2024, the landlord agreed to offset the rent from January to May against the amount owed of KES. 233,150 and the remaining balance of KES. 26,850 was paid via Mpesa on 5<sup>th</sup> May 2024.
17. Furthermore, the tenants have submitted that they made further payments of KES. 50,000 on 5<sup>th</sup> June 2024 and 5<sup>th</sup> July 2024 as evidenced by Mpesa messages.
18. The tenants have also attached an agreement dated 9<sup>th</sup> July 2024 between the 1<sup>st</sup> applicant and the 2<sup>nd</sup> respondent indicating a loan of KES. 50,000 from the 1<sup>st</sup> applicant to offset bail for the 2<sup>nd</sup> respondent who had been arrested. The agreement indicates that if the loan is not repaid within a week, the money was to be considered as rent for August 2024.
19. The landlords on the other hand have submitted that the tenants have not paid any rent in 2024 and that the tenants did not attach any evidence of rent payment in their reference. That the purported cheque produced of KES. 133,150 as annexed to the tenants' supporting affidavit has been drawn in favor of the tenants by Mogere & Company Advocates, the then advocate for the landlords.
20. Additionally, the landlords in their written submissions state that the purported cheque above of KES. 133,150 was deposited to the law firm's account (Mogere & Company Advocates) which is a fulfilment of a contractual obligation and a conditional precedent to the termination of the addendum agreement dated 30th May 2022.
21. We have perused all the attached evidence of rent payment by the tenants and find that they have shown proof of rent payment to the landlords. The landlords on the other hand have not shown any rent account statements to indicate the rent owed by the tenants.
22. Having found evidence of rent payment by the tenants after the expiration of the tenancy agreement dated 16<sup>th</sup> January 2020, we find that the tenancy herein is controlled under Cap 301 laws of Kenya and the landlords have no right to evict the tenant from the suit premises for reasons that the tenancy expired on 16<sup>th</sup> January 2024.
23. A controlled tenancy under Section 2 (1) of Cap 301, Laws of Kenya is defined as; -

“controlled tenancy” means a tenancy of a shop, hotel or catering establishment—



- (a) which has not been reduced into writing; or
- (b) which has been reduced into writing and which—
  - (i) is for a period not exceeding five years; or
  - (ii) contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
  - (iii) relates to premises of a class specified under subsection (2) of this section.”

24. Following the analysis above, we find that the tenants are entitled to the orders sought in the application dated 23<sup>rd</sup> April 2024.
25. The application by the 1<sup>st</sup> applicant for stay of proceedings for a period of 5 months to seek medical treatment through a letter to the tribunal dated 16<sup>th</sup> May 2024 in which he also requests for compensation, the same is misconceived as there is no formal application before us. Consequently, such reliefs cannot be granted through a mere letter.

**Issue (c) Who shall bear the costs of the application?**

26. Under Section 12(1)(k) of Cap. 301, Laws of Kenya, costs of any suit before this Tribunal are in its discretion but always follow the event unless for good reasons otherwise ordered. We shall order costs of the application to the tenants/applicants.

**C. Orders**

27. In conclusion, the following final orders commend to us; -
- a. The application dated 23<sup>rd</sup> April 2024 is hereby allowed as prayed.
  - b. The reference dated 23<sup>rd</sup> April 2024 is settled in terms.
  - c. The tenant shall continue to pay the reserved rent as and when the same falls due and payable.
  - d. Costs of KES. 30,000 to the tenants/applicants to be offset against the rent account.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14<sup>TH</sup> DAY of AUGUST 2024.**

**HON. JOYCE AKINYI OSODO (PANEL CHAIRPERSON)**

**HON GAKUHI CHEGE (PANEL MEMBER)**

**BUSINESS PREMISES RENT TRIBUNAL**

In the presence of:

Mr. Kiprono holding brief for Ms. Lepore for Landlord/Respondents

1<sup>st</sup> Applicant/Tenant present in person.

