



Kamau v Nyaga (Tribunal Case 623 of 2019)
[2023] KEBPRT 1137 (KLR) (Civ) (3 November 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1137 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE 623 OF 2019
CN MUGAMBI, CHAIR
NOVEMBER 3, 2023

BETWEEN

JOSEPH NDIRITHI KAMAU TENANT

AND

JOAN W. NYAGA LANDLORD

RULING

1. The tenant/Applicant's notice of motion dated 14.7.2023 seeks an order that the Tribunal be pleased to review, stay, vary and/or set aside the ruling and all consequential orders of the Tribunal made on 16.6.2023. the Applicant has also sought the costs of the application.

The Tenant's depositions in support of his application

2. The tenant's affidavit in support of his application may be summarized as follows:-
 - a. That on 16.6.2023 his Advocate attended court via the virtual platform teams where the matter came up for directions.
 - b. That the directions given by the court were that the tenant did not need to vacate the premises and that he was to ensure the stability of the premises by installing pillars.
 - c. That later that day, the tenant's Advocate informed him that they had been served with orders different from the orders issued earlier.
 - d. That the purported order instructed the tenant to handover vacant possession of the premises within thirty (30) days.
 - e. That Counsel for the tenant has not been able to obtain copies of the ruling in spite of his attempts.



- f. That the tenant intends to appeal and seeks stay of the orders issued on 16.6.2023.
- g. That the Applicant's tenancy rights are protected under the Act establishing the Business Premises Rent Tribunal.
- h. That if the review and stay orders sought herein are not granted, the Applicant will be condemned to huge losses whose ramifications will be adverse.

The Respondent's Replying Affidavit

- 3. The replying affidavit sworn by the Respondent may be summarized as follows:-
 - a. That the application by the tenant does not contain sufficient grounds for review as set forth under Section 80 of the [Civil Procedure Act](#) and order 45 of the Civil Procedure Rules.
 - b. That the allegations made under paragraphs 2, 3, 4, 5, 6 and 7 of the tenant's affidavit are deceitful.
 - c. That the instant application is irregular as the Applicant has not annexed any notice of appeal or memorandum of appeal.
 - d. That the Respondent has been denied her rental income since the inception of this suit to date.
 - e. That the instant application is frivolous, vexatious and an abuse of the process of the court.

Analysis and determination

- 4. The only issue that arises for determination is whether the tenant is entitled to the orders sought in his application.
- 5. The Tribunal is empowered under Section 12(i) to vary or rescind any order made by the Tribunal under the provisions of the Act, Cap 301 of the Laws of Kenya.
- 6. Section 80 of the [Civil Procedure Act](#) 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.
- 7. Order 45 Rule 1 of the Civil Procedure Rules provides as follows:-

Any person considering himself aggrieved;

 - a. By a decree or order from which an appeal is allowed but from which no appeal is 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.



8. The tenant/Applicant has not based his application for review on any of the grounds set forth and recognized under order 45 Rule 1 of the Civil Procedure Rules. The Applicant has not demonstrated that he has, after the ruling of 16.6.2023 discovered any new and important matter or evidence, he has not demonstrated any mistake or error apparent on the record and boldly speaking, the Applicant has not brought forth any reasons, sufficient or otherwise for the review of the court orders issued on 16.6.2023.
9. The tenant has stated/deponed that on 16.6.2023, that the court issued directions that he was not to vacate the premises but rather that he was supposed to fortify the premises by erecting pillars. The court record for the 16.6.2023 reads as follows:-

“Before Hon. Muma

Kalolia – Court Assistant

Bonyo for the landlady

No appearance for the tenant

Court: ruling delivered.

Signed: Muma Vice Chair”

From the court record, it is clear that contrary to the deposition by the tenant at paragraph 2 of the supporting affidavit, Counsel for the tenant indeed did not attend court when the ruling was delivered.

It is further clear from the court record that the court did not at any time on 16.6.2023 make any orders that the tenant was not to vacate the premises. All the court did on the said day was to deliver its ruling and which ruling required the tenant to render vacant possession of the premises within thirty (30) days.

10. In view of my above findings, I do not find any merits in the tenant’s application dated 14.7.2023 and the same is hereby dismissed with costs to the landlady.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF NOVEMBER 2023.

HON. CYPRIAN MUGAMBI - CHAIR PERSON

03.11.2023

In the presence of;

Ms. Obonyo for the landlord

Mr. Miiri for the tenant

