



**Kavuti v Musenya & 5 others (Tribunal Case E058 of 2023)
[2023] KEBPRT 700 (KLR) (6 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 700 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E058 OF 2023
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
OCTOBER 6, 2023**

BETWEEN

CHRISTINE MULILI KAVUTI APPLICANT

AND

PAULINE MUSENYA 1ST RESPONDENT

CATHERINE MUENI KIVUVA 2ND RESPONDENT

ROBERT MWAKOBA 3RD RESPONDENT

IBRAHIM JIMALE 4TH RESPONDENT

KHEIRE DIRE 5TH RESPONDENT

ERASTUS KAMANDE 6TH RESPONDENT

RULING

1. The applicant moved this Tribunal by a Reference/Complaint dated March 14, 2023 pursuant to section 12(4) of cap 301, Laws of Kenya claiming that the respondents had deliberately and unjustifiably failed to pay rent for February and March 2023. She therefore prayed for an order to compel the respondents to pay rent for February and March 2023 or that she be given leave to levy distress.
2. The applicant further sought for an order to compel the respondents to leave the premises in vacant possession and that the OCS, Mariakani Police Station to ensure compliance.



3. The applicant concurrently filed a motion dated March 14, 2023 seeking the same orders sought in the complaint. The application is predicated upon the applicant's Affidavit of even date and the grounds set out on the face of the application to wit:-
 - i. That the respondents/tenants have deliberately and unjustifiably failed to pay rent for January and March 2023.
 - ii. That the respondents/tenants have shown no commitment to honour terms of agreement to pay rent on time or explain how they will clear the balances owing,
 - iii. That the respondents/tenants be ordered to leave the premises so that the landlord can let it to another tenant who is willing to pay rent without fail.
 - iv. That the actions of the respondents/tenants interferes and further leads to loss of substantial income.
 - v. That the costs of this reference be borne by the respondents/tenants.
4. According to the applicant, she constructed the suit premises comprising of 4 shops, a bar and a restaurant wherein the tenants/respondents operate their businesses.
5. The tenants received a letter on November 30, 2022 from one Mululu Kioko who purported to be the landlord instructing them not to pay rent to the applicant. The tenants are said to have been in the premises for over 5 years now. She therefore seeks this Tribunal's intervention to compel the tenants to pay rent to her on allegations that they had deliberately and unjustifiably failed to pay rent for January, February and March 2023.
6. The respondents/tenants filed a Replying Affidavit sworn by the 1st respondent/tenant on May 4, 2023 wherein he attaches authority to act, plead, testify and swear pleadings on behalf of the rest of his co-respondents/tenants in the suit premises situate on LR No Kilifi/Mariakani Township Block 4/1xx.
7. According to the respondents, the applicant exercised her rights as landlord pursuant to a 2 years license granted by Kioko Investment Limited commencing on July 1, 2020 as per the Affidavit of Peter Mululu marked "CK-5". The license terminated on July 1, 2022 and her right as landlord reverted back to the said Company.
8. It is thus deposed that the applicant's interests in the suit property as a licensee terminated on July 1, 2022 and as such has no right or legal basis to claim rent or distress for rent from the respondents.
9. The respondents contend that they paid their February, March and April 2023 rent to Kioko Investment Limited who is the Landlord of the suit property in line with annexure 'CK-10'. She was no longer their landlord.
10. On May 18, 2023, the applicant's Reference and Application were directed to be disposed of by way of Written Submissions and both parties complied.
11. We take cognizance of the fact that the applicant filed a further Affidavit sworn on May 11, 2023 stating that the Replying Affidavit of Pauline Musenya was unfiled and that the Affidavit of Peter Mululu Kioko was executed by a person who is a stranger in this matter being not a party.
12. We have checked the e-filing portal to confirm if the Affidavit of the 1st respondent was uploaded and paid for on May 8, 2023 contrary to the applicant's contention. The Affidavit of Peter Mululu is



marked as annexure “CK-5” and is therefore not subject to the requirement that any pleadings be filed by parties to a suit. There is no basis for striking it out.

13. The following issues arise for determination in this case:-

- a. Whether the applicant’s Application and Reference ought to be granted or dismissed.
- b. Whether there exists a landlord/tenant relationship between the applicant and the respondents,
- c. Who is liable to pay costs?.

14. It is not in dispute that the applicant entered into a license agreement with Kioko Investment Limited on July 1, 2020 which was to last for two (2) years from the said date. In the Affidavit of Peter Mululu Kioko marked as annexure “PM-2” sworn on May 4, 2023, at paragraph 4, the license expired on July 1, 2022 and the property reverted back to Kioko Investment Limited. The applicant was reluctant to vacate and requested for more time until December 2022 to surrender vacant possession to the company which was granted *vide* annexure marked “CK-6”.

15. As the applicant was still reluctant to vacate as at December 2022, a meeting between her and representatives of the company was held on January 14, 2023 and she agreed to vacate the suit property as per annexure “CK-7” signed by all the parties.

16. After expiry of the license agreement between Kioko Investments Limited and the applicant, the company entered into fresh license agreements with the respondents/tenants herein which are annexed as “CK-9” and they have been paying license fees in terms of annexure “CK-10” to the company.

17. It is on that basis that the respondents submit that there is no longer any landlord/tenant relationship. We tend to agree with the tenants in view of the provisions of Section 5(1)

- “(1) Where a landlord is himself a tenant, the termination of the landlord’s tenancy shall not of itself terminate a controlled sub-tenancy but for the purposes of this Act, the person entitled to the interest in reversion expectant on the termination of the landlord’s tenancy shall be deemed to be the landlord of the controlled sub tenancy upon the terms and conditions thereof and subject to the provisions of this Act”.

18. We therefore find and hold that upon the license agreement of the applicant coming to an end and there being no evidence of renewal, the tenants herein became the tenants of Kioko Investments Limited by dint of section 5(1) of [cap 301](#), Laws of Kenya. We agree that the license having been for a fixed term, no notice under section 4(2) of [cap 301](#), Laws of Kenya was required to issue.

19. In the premises, we find and hold that the applicant is not entitled to the reliefs sought in the application and complaint dated March 14, 2023 and that there is no longer any landlord and tenant relationship existing between her and the respondent. This holding is based on the provisions of section 12(1)(a) which gives this Tribunal jurisdiction to determine whether or not any tenancy is a controlled tenancy.

20. As regards costs, the same are at the discretion of the Tribunal by dint of section 12(1) (k) of [cap 301](#), Laws of Tribunal by dint of section 12(1)(k) of [cap 301](#), Laws of Kenya but always follow the event unless for good reasons otherwise ordered. We have no reason to deny costs to the tenants/respondents herein.



21. In conclusion, the following final orders commend to us under section 12(4) of [cap 301](#), Laws of Kenya:-

- a. The applicant's reference and application dated March 14, 2023 is hereby dismissed with costs.
- b. There is currently no landlord/tenant relationship between the applicant and the respondents and the former is not entitled to any rental income or other rights against them.
- c. The respondents costs of Kshs.25,000/- shall be paid by the applicant.

It is so ordered.

RULING DATED,SIGNED & VIRTUALLY DELIVERED THIS 6TH DAY OF OCTOBER 2023.

HON. GAKUHI CHEGE

(PANEL CHAIR PERSON)

HON. JOYCE OSODO

(MEMBER)

