



**Kigo & another v Mungai & 8 others; Kiaraho (Interested Party) (Tribunal  
Case E1121 of 2024) [2024] KEBPRT 1662 (KLR) (4 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1662 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E1121 OF 2024  
CN MUGAMBI, CHAIR  
NOVEMBER 4, 2024**

**BETWEEN**

**ALEX MBUGUA KIGO ..... 1<sup>ST</sup> LANDLORD  
PENINAH NJAMBI KIGO ..... 2<sup>ND</sup> LANDLORD**

**AND**

**JOSEPH NDUNG’U MUNGAI ..... 1<sup>ST</sup> TENANT  
PETER KIRONJI NDUNG’U ..... 2<sup>ND</sup> TENANT  
TERESIA WAIHERA MUNGAI ..... 3<sup>RD</sup> TENANT  
GLADYS WAIRIMU MACHARIA ..... 4<sup>TH</sup> TENANT  
MARTIN MUIRURI NJOKI ..... 5<sup>TH</sup> TENANT  
SILVESTER MWAURA KAGOTHU ..... 6<sup>TH</sup> TENANT  
OSCAR MUNENE NJERI ..... 7<sup>TH</sup> TENANT  
PAUL KIRATU CHEGE ..... 8<sup>TH</sup> TENANT  
LUCY NJAMBI WANG’ENDO ..... 9<sup>TH</sup> TENANT**

**AND**

**EUNICE HUINI KIARAHO ..... INTERESTED PARTY**

**RULING**

1. The Interested Party’s notice of preliminary objection dated 9.9.2024 is brought on the grounds;-
  - a. That the court lacks subject matter jurisdiction to hear the matter as it is a Family Succession matter as determined by this court in its Ruling dated 29.5.2024.



- b. The subject property is an extension of the matrimonial property whose redress can only be determined by the Family court.
  - c. The court in its Ruling dated 29.5.2024 confirmed at paragraph 12 and 20 that the matter is not between a Landlord and Tenant but rather a dispute between mother and children as to who should collect rent.
  - d. The Applicant's claim if any is a claim that can only be remedied in a Family court and not this court.
  - e. The entire case is an abuse of the process of the court and the same should be dismissed.
2. The Interested Party's objection is basically that the suit property is a matrimonial property subject to Succession proceedings and further that the dispute herein is a dispute between the Landlords and the Interested Party to the exclusion of the Tenants.
  3. It is important in this Ruling, not to lose sight of the complaint before the Tribunal. The Applicants/Landlords approached the Tribunal by their Complaint dated 10.11.2023. The Complaint is that "The Tenants have refused to pay rent after demise of my father and vacate the suit premises contrary to Section 3 of Cap 301 of the Laws of Kenya."
  4. The Applicants contemporaneously with the filing of the Complaint also filed an Application wherein they sought the eviction of the Tenants for non-payment of rent. In the grounds on which the Application was based, the Applicants clearly state that the Tenants were served with termination notices dated 21.8.2023 and that the Tenants have not challenged the notices. The basis of the Application and the Reference therefore is for the enforcement of the notices to terminate tenancy dated 21.8.2023. I do not think that this is a matter that can be dealt with by the Family court. I do not understand the Reference to be contending that the Tenants have any proprietary interest in the Estate of the deceased father of the Applicants and the husband of the Interested party.
  5. The Interested party seems to rely heavily on the findings of the court in its Ruling dated 29.5.2024. But did the court oust its jurisdiction by its said Ruling?

I do not think so. The court found that in reality the dispute was one between the Applicants and their mother, the Interested Party/10<sup>th</sup> Respondent; and the question to be determined as between the said parties was as to who should collect the rent from the said premises. That question cannot be decided in the isolation of the Tenants. I would further hasten to state that it is not always that the registered proprietor of a property is the Landlord of the said property and therefore it is possible for the Tribunal to decide who is the Landlord of a premises without necessarily deciding the ownership of a property.

The Act, Cap 301, defines a Landlord thus;

"Landlord" in relation to a tenancy means the person for the time being entitled as between himself and the Tenant to the rents and profits of the premises payable under the terms of the tenancy."

6. The Tribunal in its Ruling of 29.5.2024 clearly recognized this issue when it ordered at Order (c) thereof that;
 

"The question as to who is the Landlord of the suit premises will be determined along the hearing of the Reference."
7. It is also noteworthy that the Applicants claim to have lease agreements with the Tenants whereas the Interested Party in her affidavit sworn on 9.06.2024 depones that she is the Landlady of the suit premises and that she has been receiving rent from the Tenants. In these circumstances, I do not think



the Tribunal is precluded from determining who between the Applicants and the 10<sup>th</sup> Respondent is the Landlord of the Tenants in a tenancy that none of the parties deny is a controlled tenancy.

8. But even if I were wrong on the above findings and conclusions, I would still dismiss the Interested Party's notice of preliminary objection for failing to meet the threshold of preliminary objection strictly so called. To begin with, whether or not the subject demised premises is a matrimonial property is a question of evidence which would have to be determined on the basis of evidence and affidavits. The nature of the dispute between the Applicants and the 10<sup>th</sup> Respondent has also to be established through evidence.

In the case of; Oraro vs Mbaja [2005] eKLR the court while dealing with what amounts to a preliminary objection delivered itself thus;

“I think the principle is abundantly clear. A preliminary objection as correctly understood is now well settled. It is identified as and declared to be the point of law which must not be blurred with factual details liable to be contested and in any event to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection and yet bears factual aspects calling for proof or seeks to adduce evidence for its authentication is not as a matter of legal principle a true preliminary objection which the court should allow to proceed. I am in agreement with where a court needs to investigate facts, a matter cannot be raised as a preliminary objection.”

9. In the circumstances, I do not find any merits in the Interested Party's notice of preliminary objection dated 9.9.2024 and the same is dismissed with costs to the Landlords/Applicants.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of M/S Alex & Penina – Applicants and in the absence of the 10<sup>th</sup> Respondent/ Interested Party and Counsel

Court: Reference will now proceed for hearing on 10.12.2024.

Hearing notice to issue.

