



**Ngugi v Munguchi (Tribunal Case E644 of 2022)  
[2023] KEBPRT 1153 (KLR) (6 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1153 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E644 OF 2022  
CN MUGAMBI, CHAIR & JOYCE MURIGI, MEMBER  
OCTOBER 6, 2023**

**BETWEEN**

**EVANSON WAINAINA NGUGI ..... TENANT**

**AND**

**PETER NDIRANGU MUNGUCHI ..... LANDLORD**

**RULING**

**Introduction**

1. The tenant's application dated 12.4.2023 seeks orders that the landlord and/or his agents be ordered to release the tenant's goods and other personal properties lying in the suit premises and an order that the Applicant/tenant be authorized to demolish structures that he had erected on the landlord's premises. The Applicant has also sought an order that the OCS, Muthangari police station does help in the enforcement of the court orders sought.

**The Tenant's depositions**

2. The tenant has deposed in his affidavit in support of the application that the Tribunal ordered him to vacate the suit premises by April 2023 and that his Advocate wrote to the landlord informing him that the tenant would move out as ordered but would move out with his goods and the structures he had erected in the suit premises.
3. The tenant has further deposed that on 1.4.2023, he commenced moving out of the suit premises and also started removing his goods and structures from the suit premises. But the landlord resisted the tenant's attempt to move out as such.
4. The tenant has further deposed that, he is demanding to move out with all the structures in the butchery and bar in order to go and reconstruct in another business premises.



### **The landlord's depositions**

5. The landlord/Respondent has deponed in his replying affidavit that, the tenant/Applicant is no longer a tenant in the landlord's business premises and that there is no landlord/tenant relationship, and consequently, the Tribunal has no jurisdiction to hear this matter.
6. The Respondent also depones that, the Applicant moved out of the suit premises as ordered and carried with him his personal effects and the temporary structures.
7. The Respondent further depones that the Applicant did not clear rent in the sum of Kshs. 17,350/= and the costs of Kshs. 25,000/= ordered paid by the Tribunal.

### **Analysis and determination**

8. The only issue that arises for determination in this matter is whether the tenant is entitled to the orders sought in his application.
9. It is to be noted that this matter proceeded for hearing orally and a determination thereof was made by the Tribunal's ruling of 31.1.2023. By its said ruling, the Tribunal issued the following orders:-
  - a. That the tenancy between the parties herein is ordered terminated.
  - b. The tenant will vacate the suit premises within the next three (3) months from the date of this ruling.
  - c. After the expiry of three months (February, March, April 2023) the tenant failing to so vacate, the landlord will be at liberty to forcefully evict the tenant using licensed auctioneers.
  - d. The landlord will have the costs of this reference assessed at Kshs. 50,000/=.
10. The issue of whether the tenant would be entitled to take away the structures in the suit premises was dealt with in the Ruling of the court when the court at paragraph 20 of the ruling observed,

“it is clear from the testimony of the parties that the landlord purchased the suit premises while the tenant was already in the premises. My understanding then would be that the landlord purchased the whole of the premises as he found it. If there was any interest of the tenant at the time of the purchase, then no evidence of the same has been tendered by the tenant... I am prepared to find and I do find that the tenant did not have the consent of the landlord to renovate the premises and he cannot therefore claim for any compensation from the landlord for the alleged repairs.”
11. The Applicant/Tenant has not sought to have the court herein review its decision, what is apparent is that the tenant is seeking to re-open the litigation herein after a final pronouncement by the court. Absent an application for review, I am of the view that the Tribunal has no jurisdiction to re-pen litigation where it has pronounced itself with finality.
12. The landlord/Respondent has deponed in his affidavit that the tenant vacated the premises as ordered by the Tribunal and carried his belongings with him. While it is contestable whether the tenant carried away his belongings, it is clear that the tenant moved out of the premises and as such there is no longer a landlord/tenant relationship between the parties. Where such a situation obtains, it is trite law that



the Tribunal lacks the jurisdiction to hear and determine the dispute. In the case of; *Pritam v Ratilal and Another* [1972] EA 560, the court held as follows;

“...Therefore the existence of the relationship of landlord and tenant is a pre-requisite to the application of the Act and where such relationship does not exist or it has come to or been brought to an end, the provision of the Act will not apply. The applicability of the Act is a condition precedent to the exercise of jurisdiction by a tribunal, otherwise the Tribunal will have no jurisdiction. There must be a controlled tenancy as defined in section 2 to which the provisions of the Act can be made to apply. Outside it, the Tribunal has no jurisdiction.”

13. Consequently, it is my finding that, the Tribunal has no jurisdiction to open this litigation in the absence of an application to review its judgment and even if I was wrong on this limb. I do further find that there does not exist a landlord and tenant relationship between the parties, the same having been expressly terminated by the ruling of the Tribunal and the tenant having vacated the premises as ordered by the Tribunal.
14. The upshot of the foregoing is that, the Tribunal lacks the jurisdiction to hear and determine the application dated 12.4.2023 and the same is dismissed with costs to the landlord/Respondent.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6<sup>TH</sup> DAY OF OCTOBER 2023.**

**HON. CYPRIAN MUGAMBI - CHAIRPERSON 6.10.2023**

**HON. JOYCE MURIGI - MEMBER 6. 10.2023**

