



**Chitechi v Mbugua (Tribunal Case E113 of 2022)
[2023] KEBPRT 699 (KLR) (4 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 699 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E113 OF 2022
GAKUHI CHEGE, VICE CHAIR
MAY 4, 2023**

BETWEEN

JANET CHITECHI TENANT

AND

DAVID MBUGUA LANDLORD

RULING

1. On 2nd March 2013, the tenant moved this Tribunal through an application of even date seeking for orders that her application dated 25th November 2022 be reinstated for hearing on merit. She also prays that the Landlord be restrained from evicting her until determination of the case.
2. The said application was dismissed on 1st March 2023 when counsel for the tenant had virtually attended court but was unable to unmute his microphone for purposes of addressing the Tribunal. The Tribunal was informed by counsel appearing for the Landlord, that the tenant's counsel had not attended the virtual session whereupon an application for dismissal was made and allowed.
3. After the Tribunal was done with the day's cause list, the tenant's counsel was able to address the court and was requested to raise the other counsel for purposes of setting aside the dismissal order by consent. The other counsel is accused of failing to pick the call or reply to text messages and instead switched off his phone. All efforts to visit the offices of the landlord's advocates in an attempt to persuade them to concede to setting aside the dismissal order were futile leading to filing of the instant application.
4. The application is opposed through a replying affidavit of the landlord sworn on 9th March 2023 wherein it is deposed that the same has been overtaken by events as the Applicant was removed from the premises which had been rented out to another tenant as per annexure "DM(a) & (b)". By the time of eviction, the tenant was in arrears of Kshs.68,100/- as evidenced by annexure "DM-2".
5. I am therefore required to determine whether the applicant's motion ought to be allowed or dismissed and secondly who is liable to pay costs.



6. I have a further affidavit sworn on 9th March 2023 by the Tenant/Applicant in which she confirms that after the Landlord moved the Tribunal to dismiss her case, he initiated her eviction from the suit premises based on a notice that was never served on her and that if it was served, there were stay orders in force.
7. The tenant annexes as “JC” 1(a) & (b) 4, the notice given to her by the auctioneers and letter authorizing her eviction which she alleges was done irregularly. She confirms that she was evicted and her property attached on account of alleged arrears owed to the landlord which are disputed. She therefore prays that the premises be reopened for her.
8. In the instant case, the application for reinstatement of the dismissed motion must of necessity be tied with the question of existence of a landlord/tenant relationship between the parties herein which boils down to the issue of the Tribunal’s jurisdiction.
9. In the case of Re Hebtullah Properties Ltd (1979) eKLR, the Superior Court while addressing the powers of the Tribunal under Section 12 of Cap. 301, Laws of Kenya had the following to state at page 9/11 on the issue of recovery of possession:-

“The recovery of possession” must here mean and means, recovery of possession by and not from the landlord. The legislature deemed it necessary to empower the tribunal to order recovery of possession by the landlord. If the reverse had been intended, it would have been expressly provided since the intention of the Act is to protect tenants. In my opinion, it is, therefore clear that parliament never intended that the Tribunal should have power to order recovery of possession by a tenant where such possession has been seized by a landlord and it never gave that power to the Tribunal. That power cannot be implied. In the premises, forcible taking of possession “is not a matter within the area of jurisdiction of the Tribunal and that being the case, the Tribunal cannot investigate any complaint about forcible possession of premises by a landlord, such matter being for the courts. I find that the complaint was outside the area of jurisdiction of the Tribunal. Jurisdiction was wanting”.

10. It follows that even if I allowed the application for reinstatement of the tenant’s application dated 25th November 2022 and the complaint herein, I will not be able to reinstate the tenant and shall be acting in vain. A court of law is not entitled to give orders in vain and I refuse to be persuaded to do so despite being sympathetic to the acts visited upon her by the landlord. Her remedies lie elsewhere.
11. In the premises I shall dismiss the application with no orders as to costs. In view of what I have said hereinabove, the order of costs made against the tenant on 1/3/2023 is hereby set aside as failure to address court was not out of her fault as her counsel clearly explained on the same date about the technological challenges he faced in doing so.
12. Consequently, the following orders commend to me in this case:-
 - a. The tenant’s application dated 2nd March 2023 is dismissed with no orders as to costs.
 - b. The order for payment of costs made against the tenant on 1st March 2023 is hereby set aside under Section 12(1)(i) thereof.
 - c. The tenant is at liberty to institute proceedings in the appropriate forum for any desired reliefs as this Tribunal no longer has jurisdiction over the matter.
 - d. This file is consequently ordered closed.

It is so ordered.



RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 4TH DAY OF MAY 2023.

HON. GAKUHI CHEGE

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of:-

Nakitare for the Landlord

No appearance for the Tenant

