



**Ambundo v Tailor (Tribunal Case E028 of 2023)
[2023] KEBPRT 658 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 658 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E028 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
NOVEMBER 24, 2023**

BETWEEN

JOHN BRIAN AMBUNDO TENANT

AND

DR. ANIL TAILOR LANDLORD

RULING

A. The Dispute Background

1. The landlord/respondent has filed a Notice of Grounds of Opposition dated 20th June, 2023 stating the following ; -
 - i. That the application filed by the applicant against the respondent is incompetent, misconceived and bad in law.
 - ii. That the respondent/landlord sued herein is a non-entity, hence incapable of being sued.
 - iii. That the respondent/landlord is not the proper respondent who has been sued. The proper respondent should be RAM Training College instead, as indicated by the reference which is the suit bearing the application herein.
 - iv. That other and further grounds as shall be raised at the hearing hereof.
2. At a court hearing on 2nd August, 2023, this Tribunal ordered that the Notice of Grounds of Opposition which was erroneously referred to as a Preliminary Objection in the proceedings be canvassed by way of written submissions. The landlord/respondent filed his submissions dated 8th September, 2023. We shall consider the submissions and other court documents while dealing with the matters raised in the Notice of Grounds of Opposition herein.



B. Analysis

3. The Notice of Grounds of Opposition raises issues of mixed law and fact and therefore does not pass the test laid down in the case of *Mukisa Biscuits Manufacturing Ltd v West End Distributors* (1969) EA 696 where it was stated as follows:

“----a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case, Sir Charles Newbold, P. stated:

“a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

4. In the instant case we have perused the grounds listed by the landlord in the Notice of Grounds of Opposition erroneously referred to as a Preliminary objection and we note that the respondent submits that he lacks the legal capacity to be sued by the applicant/tenant because the reference filed by the tenant/applicant indicate that he sued RAM Training College and not the respondent/landlord in his personal capacity.
5. We however note that the tenancy agreement herein annexed as “JBA-1” dated 26th April, 2021 is between the parties in this matter and not between the applicant/tenant and RAM Training College.
6. There is also no denial that the landlord herein is the owner of the suit premises as deposed in his replying affidavit dated 20th June, 2023 which states as follows ; -

“ 1. That I am the owner of the property under issue herein, and the proprietor of the business name RAM Training College herein,.....”

7. Furthermore, there is evidence submitted by the tenant/applicant showing a Co-operative Bank Cheque dated 13th November, 2022 of ksh. 50,000 paid to the landlord/respondent.
8. The term ‘Landlord’ is defined in Section 2 of Cap. 301, to mean: -

“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”.
9. The landlord herein thus fits the description of a landlord under Section 2 of Cap. 301 stated above and the Notice of Grounds of Opposition lacks merit.

C. Orders.

10. In conclusion therefore, the orders which commend to us on the purported Preliminary Objection (Notice of Grounds of Opposition) dated 20th June, 2023 are as follows; -



- a. The Notice of Grounds of Opposition dated 20th June, 2023 is hereby dismissed.
 - b. The matter shall proceed to hearing on merit.
- It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH day of NOVEMBER 2023.

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE

(MEMBER)

In the presence of:

Wesonga holding brief for Kaba for Tenant/applicant

Angwenyi for Landlord/Respondent

