



**Mukabane & 2 others v Maina & 2 others (Tribunal Case E020 of 2024)
[2024] KEBPRT 795 (KLR) (Civ) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 795 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL**

**TRIBUNAL CASE E020 OF 2024
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER**

MAY 23, 2024

BETWEEN

**AINEAH ANWA MUKABANE 1ST APPLICANT
PATRICK NDINGRO 2ND APPLICANT
JOANES OCHIENG OLUNYA 3RD APPLICANT**

AND

**NAFTARY MAINA 1ST RESPONDENT
MWANGI MAINA 2ND RESPONDENT
IVORY HOMES CARE LIMITED 3RD RESPONDENT**

RULING

1. The Applicants moved the court by their joint reference dated 8th January 2024. The same was anchored on section 12(4) of the [Landlord and Tenant \(shops, Hotels and Catering Establishments\) Act](#) (Cap. 301) hereinafter “the Act”. Their complaint was that:-

“Naftaly Maina Mwangi and Ivory Homes Cate Limited have blocked our business premises with construction blocks, poles, twisted metals and ballast and intend to evict contrary to [Cap. 301](#) of the Laws of Kenya”.
2. The Reference was filed together with a notice of motion of the even date which sought that the respondents be compelled to remove all the materials blocking their premises or that the Tenants be allowed to remove them under the supervision of the OCS Kamukunji Police Station and at the cost of the Respondents.



3. The Applicants also sought to be granted orders restraining the Respondents from interfering with their free access to their business premises or interfering with their quiet possession thereof. The application was supported by the Affidavit of Ainea Mukabana sworn on the 8th January 2024. The Applicant thereafter filed the further affidavit also sworn by the 1st Respondent and their submissions dated 4th April 2024.
4. The case for the Applicants is that:-
 - i. They were lawful tenants of the Respondents in a controlled tenancy under the act at the rent of Kshs.14,000/- per month.
 - ii. With the authority of the respondents, they had erected temporary structures at the premises to facilitate their business at a cost of Kshs.50,000/-.
 - iii. The Respondents have been harassing them with an attempt to evict them from the demised premises and this was escalated on the 4th January 2024 when the respondents blocked their access to their businesses by depositing construction materials at the premises.
 - iv. They were several tenants sharing the demised premises and the respondents were very much aware of them – annexure “AAM1”.
 - v. In the past, they had engaged the respondents when they had fallen back in rent payments annexure “AMM2”.
 - vi. They moved the court and were issued with orders but in defiance the respondents broke into the premises, vandalized the same, broke down the perimeter walls which occasioned loss of their tools of trade and damage to others at Kshs.164,500/-.
 - vii. The Respondents have further put up a wall running through the demised premises greatly compromising their businesses as they continues to harass them.
 - viii. The actions of the respondents have been reported to Kamukunji Police station and recorded under OB No. 52/9/1/2024- Annexure “AAM4”.
5. On their part, the respondents filed the Replying Affidavit sworn by Naftary Maina on the 15th January 2024 and thereafter the submissions dated 26th April 2024. The case for the respondents is that:-
 - i. The 1st and 2nd applicants are busy bodies and have no locus standi to move this court as they have done.
 - ii. They had moved their bonafide tenants to another space to allow renovations on the demised premises and who had no objections to the same.
 - iii. That the wall they erected was a perimeter wall around their plot measuring 20 by 50.
 - iv. The Applicants required to be compelled to produce their identity cards so that they could be properly identified.
 - v. The Applicants occupy the premises and pay the rent on behalf of one Jones Oganyo and are therefore unknown to them.
 - vi. The 3rd applicant should join all the other recognized tenants to the space secured for them to allow for the construction of the perimeter wall.



- vii. The materials brought and labour involved sum to Kshs.615,370/- and if the orders granted are sustained they would suffer grave losses.
 - viii. The orders of the court were obtained through falsehoods and same should be vacated.
 - ix. The 1st Applicant had no authority to plead in court and the Applicants suit should therefore be dismissed.
6. We have perused all the materials before court and are of the view that the issues for determination in this matter are the following:-
- A. Whether the Applicants are properly before the court.
 - B. Whether the Application has merit.

Issued No. A - Whether the Applicants are properly before the court.

7. The landlords have acknowledged knowing the 3rd Applicant Albeit in different names. They actually proposed that he should join the other alleged bonafide tenants at a space secured for them but which was not disclosed. At paragraph 7 of their replying Affidavit, the respondents by inference do recognize the 1st and 2nd applicants as their tenants. The averment reads the following:-

“That the Applicants/Tenants are not the original tenants and are staying and paying rent on behalf of Jones Oganyo hence are against the law as per [Cap. 301](#) Laws of Kenya and they are not supposed to file a direct application which is before the court.

8. By that sweeping disposition under oath, the respondents admitted that the Applicants were in possession of the demised premises and that they were paying rents to them. That sealed the relationship of the parties as that of a landlord and Tenant which is also controlled under section 2(1) of the [Act](#). The same provides that:-

“Controlled tenancy means a tenancy of shop, hotel or catering establishment-

- a. Which has not been reduced into writing, or
- b. Which has been reduced into writing and which-
 - i. Is for a period not exceeding five years, or
 - ii. Contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof, or”

9. The [Act](#) under the same Section 2 (1) defines who a landlord and a Tenant in relation to controlled tenancies are :-

“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”.

10. On the other hand a Tenant is defined as,-

“In relation to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding and includes a sub-tenant”.



11. Therefore, from the evidence of both parties as cited herein before, the applicants qualify as tenants to the demised premises and in the worst case scenario as sub-tenants to the demised premises with equivalent rights to any tenant.
12. An issue has been raised on whether the 1st Applicant could swear and plead without authority. To start with, the 1st applicant has vowed at every commencement of his pleadings that he had the authority of the 2nd and 3rd Applicants and which was never refuted. In our view also, affidavits constitute evidence and we doubt that even without such authority, its place in the pleadings or its probative value would be affected.
13. Justice D.K. Maraga Judge (as he then was) in the case of [*Peter Onyango Onyiego v Kenya Ports Authority*](#) [2004] eKLR held that:-

“In the circumstances I hold that other than verifying affidavits which as I have stated must be sworn by the plaintiffs themselves or by their authorized agents all other affidavits filed and used in courts are not among the acts covered by order 3 Rule 1 to 5. All other affidavits can be sworn on behalf of individuals or corporations by anybody as long as that person is possessed of the facts and or information that he depones on, that in the rules of evidence would be admissible. Mere failure to state that the deponent of such an affidavit has the authority of such corporation on whose behalf he swears it does not invalidate the affidavit. That is an irregularity which courts, can under order 18 Rule 7 of the [*civil Procedure Rules*](#), ignore”.
14. Only to add that no prejudice was cited to impact on the rights of the respondents if the said affidavits were to be considered in determining this matter. the upshot of all that is our finding that the Applicants are properly before this court in terms of their pleadings and on the jurisdiction of this court as conferred by the Act.

Issue No. B - Whether the Applicant's application has merit.

15. Though the respondents have alleged that they have provided alternative space to their bonafide tenants, the same has not been disclosed. None of the alleged tenants have provided any evidence of the existence of such purported space or premises. On their part, the applicants have denied knowledge of any such offers.
16. Having established the existence of Landlord/Tenant relationship between the parties, it was incumbent upon the Respondents to strictly comply with the Act in altering any term of the tenancy. Section 4(2) of the [*Act*](#) provides that:-

“A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the Tenant under such a tenancy, shall give notice in that behalf to the tenant in the prescribed form”.
17. No such notice was issued. The Act that regulates and governs the relationship between landlords and Tenants seeks for strict and complete compliance. It frowns on any transgressions to its provisions like in the present case. It is sad that the respondents even after the orders of this court made on the 9th January 2024 continued to interfere with Applicants quiet possession of the demised premises. This is exemplified by report to the Police and the subsequent activities of the respondents of demolishing walls and constructing fresh ones. This is unacceptable and the respondents who have the benefit of a counsel are encouraged to orientate themselves with the [*Act*](#).



18. In this case, we find that the Respondents had no justification nor authority of the law to block the Applicants from accessing their businesses. All the circumstances of this matter points to respondents who are determined to oust the Applicant's quiet possession without regard to due process of the law.
19. We therefore determine that the applicant's were justified to move the court for its intervention. We put reliance on the case of Robert Mugo Wa Karage v Eco Bank (Kenya) Limited and Another [2019] eKLR where the court in deciding on an injunction application held that:-

“circumstances for consideration before granting a temporary injunction under section 40 rule 1 of the Civil Procedure Rules requires a proof that any property in dispute in a suit is in danger of being wasted damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or that the defendant threatens or intends to remove or dispose the property, the court in such situation is enjoined to grant a temporary injunction to restrain such acts...”.

20. We therefore proceed to grant orders sought in the motion to the effect that the Applicants will be allowed quiet possession of the demised premises until determination of the reference herein. The other issues of special damages and any other claims can only be raised during the hearing of the reference and it is so directed.

Issue No. C - Who should bear the costs of this application.

21. We abide the conventional wisdom of the proviso to Section 27 of the Civil Procedure Act and award the costs of the application to the Applicants.
22. In the final analysis, the orders that commend to us are the following:
- i. That the Application is allowed in terms that the applicants shall be allowed quiet possession of the demised premises pending the hearing and final determination of the reference herein.
 - ii. That the costs of the application are awarded to the Applicant's.

Those are the orders of the court.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF MAY 2024.

HON. NDEGWA WAHOME, MBS - PANEL CHAIRPERSON

HON. JOYCE MURIGI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL (BPRT)

23RD MAY 2024.

Ruling delivered in the presence of Mr. Njagi holding brief for Mr. Mathenge for the Respondents and Mr. Odhiambo for the Applicants.

HON. NDEGWA WAHOME MBS - PANEL CHAIRPERSON

HON. JOYCE MURIGI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL (BPRT)

23RD MAY 2024

Court:



1. The parties have 14 days each to comply with order 11 of the [*civil Procedure Rules*](#) starting with the Applicants with reciprocal days to the Respondents.
2. The matter shall be mentioned on the 24th June 2024 to confirm compliance and take a date for hearing.

HON. NDEGWA WAHOME MBS - PANEL CHAIRPERSON

HON. JOYCE MURIGI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL (BPRT)

23RD MAY 2024

