



**Total Security Limited v Teleposta Pension Scheme Registered Trustees & another;
Carmax East Africa Limited (Interested Party) (Tribunal Case 902 & 903 of 2016
(Consolidated)) [2023] KEBPRT 1027 (KLR) (Civ) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1027 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE 902 & 903 OF 2016 (CONSOLIDATED)
A MUMA, AG. CHAIR
DECEMBER 19, 2023**

BETWEEN

TOTAL SECURITY LIMITED TENANT

AND

**TELEPOSTA PENSION SCHEME REGISTERED TRUSTEES 1ST RESPONDENT
INTERCOUNTRIES IMPORTERS AND EXPORTERS LIMITED 2ND
RESPONDENT**

AND

CARMAX EAST AFRICA LIMITED INTERESTED PARTY

RULING

A. Parties And Their Representatives

1. The applicants, Total Security Limited & Le Molok Limited, entered into a tenancy agreement for business premises erected on Property L.R No. 209/13238 formerly known as L.R No. 209/2397.
2. The firm of Wandabwa Advocates is on record for the Tenants in this matter.
3. The Firm of Kale Maina Bondotich Advocates is on record for the 1st Respondent in this matter.
4. The firm of Kilonzo & Company Advocates is on record for the 2nd Respondent in this matter.

B. The Dispute Background

5. On October 6, 2023, the Court delivered a ruling allowing the Tenant's Application dated June 22, 2023. The Tenant sought to stay the proceedings of this Honourable Court pending the hearing and



determination of the land ownership dispute that was before the Court of Appeal in Civil Appeal No. 293 of 2016: Teleposta Pension Scheme Registered Trustees v. Intercountries Importers and Exporters Limited and 5 others. For the avoidance of doubt the stay was granted.

6. Subsequently, the 2nd Respondent filed an Application under a certificate of Urgency dated 26th October 2023 seeking Orders to review and/or set aside the Order of the Court dated 6th October 2023.

C. Claim And Defence

7. The 2nd Respondent's Application is supported by the Affidavit of Naushad Abid who avers that the Tribunal stayed its own proceedings erroneously for the reason that the High Court in ELC Appeal No. 10 of 2017 held that the issues in the current proceedings are distinct from those before the Court of Appeal.
8. In its submissions dated 5th December 2022, the 2nd Respondent submits that the Tribunal erred in its interpretation of the Ruling of the Court of Appeal which clearly indicated that the issues before the Court of appeal were separate and distinct from those before the Tribunal.
9. On the other hand, the 1st Respondent opposes the said Application on the grounds that the same does not meet the legal threshold required for an Order for review under section 80 of the Civil Procedure Act, 2010. On that basis, the 1st Respondent submits that the said Application is not merited and should therefore be dismissed with costs.

D. Issues For Determination

10. I have carefully analyzed the documents filed by both parties. It is my considered opinion that two issues fall for determination:
 - i. Whether the Application to review, vary and/or set aside the Order of the Court dated 6th October 2023 is merited.
 - ii. Whether Tribunal Case No. 902 and 903 of 2016 and 901 of 2023 should be Consolidated.

E. Analysis of the Law

- i. Whether the Application to review, vary and/or set aside the Order of the Court dated 6th October 2023 is merited.
11. It is not in dispute that this Tribunal is clothed with the Jurisdiction to vary, review and/or set aside its own orders pursuant to section 12 of cap 301. The Application before me is one such Application, where the Applicant seeks to have the Court set aside its Orders issued on October 6, 2023.
12. I am guided by the principles of review under section 80 of the Civil Procedure Act, 2010 which provides that:

“ Any Person who considers himself aggrieved

 - a. By a decree or Order from which an Appeal is allowed by this Act, but from which no Appeal has been preferred;
 - b. By a decree or appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”



13. Further, order 45 of the [Civil Procedure Rules](#), 2010 provide for the legal threshold for review as follows:

“ Any person considering himself aggrieved—

- a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

14. I note that the having perused the decision of the Court of Appeal in Civil Appeal No. 293 of 2016, I am convinced that the issues before the Tribunal and those before the Court of Appeal are quite distinct and separate.
15. This is for the reason that while the issues before the Tribunal relate to the eviction of the protected tenants, the issues at the Court of Appeal relate to the ownership of the Property, over which the Tribunal lacks jurisdiction. I also note that there is an appeal challenging the jurisdiction of this tribunal at the Court of Appeal as well.
16. I note that [cap 301](#) was enacted to protect tenants of certain premises from eviction or exploitation. However, the Tribunal has to determine matters on a balance of probabilities by balancing the rights of both the Landlord and the Tenant. This can only be done by allowing the matter be heard on its merit.
17. The Tenants herein sought protection from this Honourable Court in the wake of eviction by the 2nd respondent pursuant to the determination of the High Court in ELC Court Civil Suit No. 1400 of 2004, where the Court declared the Applicant/ 2nd Respondent as the lawful owner of the property.
18. It is my considered opinion that this Tribunal is not called upon to determine the issue of ownership but to ensure that the terms of the tenancy and the provisions of Cap 301, and provisions relating to eviction of tenants in particular are adhered to.
19. I note that the ownership dispute is still pending before the Court of Appeal, pursuant to the Court’s determination in Civil Appeal 293 of 2016, directing that both appeals on ownership and on tribunals jurisdiction to hear this reference be fixed for hearing separately as they related to separate issues.
20. It is my considered opinion therefore, that despite the existing contestations as to the ownership of the property, the same does not operate as stay of proceedings and the Tenants were right to approach the Tribunal for protection. Additionally, there are no Court orders directing that the proceedings before this Court be stayed.
21. Accordingly, I am convinced that the issues pending before the Court of Appeal are distinct from those before this Tribunal. This alone amounts to a sufficient reason for me to set aside Orders of the Court staying its proceedings and have the matter determined on its merits.
 - iii. Whether Tribunal Case No. 902/903 of 2016 and 901 of 2023 should be Consolidated and heard together



22. This Tribunal is guided by the decision of the Supreme Court in Petition No. 14 of 2013 *Law Society of Kenya vs Center for Human Rights and Democracy and 12 Others* (2014) eKLR, where the Court observed as follows: -

“the essence of consolidation of suits is to facilitate the efficient and expeditious disposal of disputes, and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it.”

23. This Tribunal is further guided by the principles of consolidation as elucidated in *Benson G. Mutahi vs Raphael Gichovi Munene Kabutu & 4 others* (2014) eKLR where the Court stated: -

“where there are common questions of law or facts in actions having sufficient importance in proportion of the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be ordered”

24. I am convinced that both cases relate to the same question of law. In the circumstances, it is in the interest of justice that both matters be consolidated and disposed of at the same time to save costs, effort as well as the time of the Court.

F. Orders

25. The upshot is that the 1st Respondent's Application dated June 26, 2023 is hereby allowed in the following terms:
- a. The Orders of this Tribunal dated October 6, 2023 are set aside and all consequential orders therefrom;
 - b. The Tribunal Case Nos. 902 /903 of 2016 and 901 of 2023 be and is hereby consolidated, File 903/902 of 2016 be the lead file;
 - c. The Application in Tribunal Case No. 901 of 2023 and Reference in 902 and 903 of 2016 be heard together;
 - d. The Respondents Intercountries Importers and Exporters Limited, to file and serve all documents including submissions in 14 days;
 - e. The Tenants, Landlords Respondents Telposta Pension Scheme and the Interested Party to respond in 14 days; and
 - f. All parties will have a further 7 days to do further responses and supplementary submissions if they so wish.
 - g. The hearing on January 26, 2024.
 - h. Leave to appeal granted and status quo to be maintained.

HON A. MUMA

Ag/MEMBER

HON. J ROP

MEMBER

BUSINESS PREMISES RENT TRIBUNAL



Ruling dated, signed and delivered virtually by Hon. Muma this 19th day of December 2023 in presence of Ondieki for Applicant/2nd Respondent-Intercountries Importers and Exporters Limited, Dachi for the Tenants, Dachi holding brief for Mathenge for the Landlord, 1st Respond-ents Teleposta Pension Scheme Registered Trustees and Ochola for the Interested Party.

HON A. MUMA

Ag/MEMBER

HON J ROP

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

