



**Ngumu & another v Kyumbu (Tribunal Case E809 of 2022)  
[2023] KEBPRT 1156 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1156 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E809 OF 2022  
P MAY, MEMBER  
JULY 26, 2023**

**BETWEEN**

**PETER MULI NGUMU ..... 1<sup>ST</sup> APPLICANT**

**SILA KITONYI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JAMES MBATHA KYUMBU ..... RESPONDENT**

**RULING**

1. The application before me is the tenant's notice of motion dated 3<sup>rd</sup> April, 2023 brought by way of certificate of urgency. The application seeks to set aside the orders issued by the Honorable Tribunal on 27<sup>th</sup> March, 2023 which the tenant is aggrieved by the same.
2. The present application is premised on the grounds set out on the face of the application and the further grounds contained in the supporting affidavit which can be summarized hereunder.
3. The applicant from the onset states that the orders issued were a nullity since the entire process that led to the delivery of the ruling was shrouded in secrecy and they were not granted a chance to be heard. The tenants therefore urged the Tribunal that they stood to suffer irreparable harm as the execution process had commenced based on the orders. The tenants maintained that they had always paid rent as when it fell due and that the levying of distress that the landlord had commenced was highly prejudicial.
4. The application was opposed through the Replying Affidavit sworn by the landlord. The landlord claimed that the tenant had instituted the present proceedings and it was their duty to prosecute the same.
5. The parties elected to canvass the application by way of written submissions. I have considered the submissions on record and the pleadings and do proceed as follows:



6. The issue for determination in the present application is whether the orders sought by the applicant are merited.
7. It is clear that in exercising the powers conferred under the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), this Honourable Court must restrict itself to the powers conferred to it under Section 12 of the said Act.
8. Section 12 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) clearly stipulates as follows:
  12. A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power—
    - (i) to vary or rescind any order made by the Tribunal under the provisions of this Act;
9. This power of the Tribunal was elaborated by the High Court in the case of [Spares Corner \(K\) Ltd. Vs Maram Noormohamed, Abdul Hamid Noormohamed, Ismael Noormohamed](#) [2003] eKLR, in which the Tenant sought for review of a decision issued by this Tribunal, after the Tenant had been evicted from the suit property and the Tenancy relationship between the parties severed. The High Court in affirming the power of this Tribunal to vary or rescind its orders as provided under Section 12 (i) of the [Act](#), and in remitting the matter back to the Tribunal for consideration on merit despite the execution of earlier orders stated as follows:
 

“It is difficult to see under what circumstances a Tribunal would be asked to vary or rescind any order made under the Act if it cannot reconsider its own orders dismissing a reference and ordering a tenant’s eviction. The Act provides for it and it is in any event a fundamental principle of Justice.”
10. Based on the foregoing, it is therefore clear that this Honourable Tribunal has the power to review or vary or rescind earlier orders issued by it. Subsequently, this raises the question on what grounds or under what circumstances is this Honourable Tribunal required to consider an application to vary or rescind its earlier orders?
11. In response to the above question, I stand guided by the decision in the case of [Transallied Limited v Sakai Trading Limited](#) [2016] eKLR, where the Environment and Land Court addressed its mind on the grounds that should guide this Court in exercising its review powers as follows:
 

“The appeal before us is against the decision of the tribunal that was made on 1<sup>st</sup> July 2011 by which the tribunal declined to review its order made on 3<sup>rd</sup> September 2010 striking out the Appellant’s complaint for want of jurisdiction. What we have been called upon to determine is whether the tribunal acted correctly in rejecting the Appellant’s application for review. Section 12(1) (i) of the Act gives the tribunal power to vary or rescind any of its orders. The Act does not provide for the circumstances under which the tribunal can exercise that power...We are of the view that the provisions of the [Civil Procedure Act](#) and the rules made thereunder would apply to the proceedings before the tribunal unless expressly stated otherwise in the Act and the regulations made thereunder which we have referred to above...What we are to determine is whether the Appellant’s application for review before the tribunal met the threshold set out under Order 45 Rule 1(1) of the [Civil Procedure Rules](#).”



12. The grounds in which a Court may exercise its power of review are clearly stated under Order 45 rule 1(1) of the [Civil Procedure Rules](#). The said provision provides as follows:
- “any person considering himself aggrieved by a decree or order from which an appeal is allowed but from which no appeal has been preferred or by a decree or order which no appeal is 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 errors 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.”
13. Therefore, in order for the Tenant herein to succeed in this application, he must satisfy either of the conditions stipulated in Order 45 Rule 1 of the [Civil Procedure Rules](#) which are:
- a) Discovery of a 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;
  - b) A mistake or error apparent on the face of the record; and
  - c) Any other sufficient reason.
14. In addition to the above grounds, the law further requires that an application for review of orders must be made by the Applicant without unreasonable delay.
15. With this background in mind, I shall proceed to analyse whether the Tenant herein has met the threshold to warrant review of the orders issued by this Honourable Tribunal on 27<sup>th</sup> March, 2023.
16. I have perused the application against the above conditions and it is quite unfortunate that none of the grounds raised by the tenant is plausible. They are far fetched and a proof that the tenant is trying to cure their indolence in prosecuting the application by chasing a wild goose hoping it will lay the proverbial golden egg. Such conduct should be frowned upon and not entertained any further. The application has no limbs to stand on and as such is ripe for dismissal.
17. In view of the foregoing, the application dated 3<sup>rd</sup> April, 2023 is hereby dismissed with costs awarded to the landlord assessed at 25,000.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF JULY 2023**

**HON. PATRICIA MAY**

**MEMBER**

**7.2023**

**In the absence of the parties**

