



**Adeoye & 12 others v Ravasam Development Company Ltd & 8 others (Tribunal
Case E1305 of 2023) [2024] KEBPRT 966 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 966 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1305 OF 2023
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
JULY 11, 2024**

BETWEEN

PASTOR DAVID ADEOYE & 12 OTHERS APPLICANT

AND

RAVASAM DEVELOPMENT COMPANY LTD & 8 OTHERS RESPONDENT

RULING

1. These proceedings were commenced through the reference dated 27th December 2023 said to be anchored on Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) (Cap. 301) hereinafter “the Act”. The grievance by the Applicants was that”-

“The Landlords were intimidating, harassing and threatening to evict them from the demised premises. That the landlords had sent goons to the premises and who had been harassing, intimidating and threatening to evict the Tenants”.
2. The reference was accompanied by a Notice of Motion application of even date and which in principal sought that:-
 - a. The Landlords/Respondents be and are hereby restrained from interfering with the Tenants quiet possession of the demised premises.
 - b. The Tenant’s be allowed not to pay rent until the ownership of L.R No. 2/186 Nairobi was determined.
3. From the record and presentations by the parties, it seems that normalcy was returned at the demised premises as the proceedings herein took effect. It also came out clearly that the question of shareholding of the 1st Landlord/Respondent and the owner of L.R No. 2/186 situate off Elgeyo Marakwet Road within Nairobi was by a judgement of Justice F. Tuiyott delivered on the 20th January 2020 resolved in favour of the 6th and 7th Respondents herein.



4. From the record, that judgement was still in force by the time the hearing of this matter was concluded on the 12th June 2024. It seems also that the court of appeal in Coacappl/E509/2023 had not been persuaded enough to stay the judgement in favour of the 6th and 7th Respondents aforesaid.
5. Therefore, as these proceedings continued, the twin issues as raised in the reference dated 27th December 2023 and the motion of the even had been largely resolved. The Applicants had been allowed quiet possession of their respective spaces and ownership of the demised premises was no longer in issue unless it would otherwise be ruled by the court of Appeal.
6. This matter then turned on the question of whether the 12th, 34th, 49th 50th and 63rd Tenants had paid rent in advance to the 1st Landlord for the months of January, 2024 to June, 2024 both months inclusive. This is from their claim that they had paid the same through the 2nd Landlord/Respondent on behalf of the 1st Landlord/Respondent.
7. To resolve this question, the court by directions made on the 31st May 2024, the parties were required to file all their evidence on the question including respective submissions. The parties were also to be afforded an opportunity to highlight on such submissions.
8. We confirm that the 2nd and 3rd Respondents filed a replying affidavit sworn by Eric Agbeko on the 31st May 2024. The Tenants filed their submissions dated 4/6/2024 together with supporting case laws. On the part of the 1st, 6th and 7th Respondents, they filed the submissions dated 11th June 2024 and a bundle of authorities of the same date. The 8th Respondent on its part filed the Replying Affidavit sworn on the 13th May 2024.
9. We have perused all the pleadings by the parties, the submissions filed and those rendered orally and have appreciated the same as we render this Ruling. At the outset, we find it unconscionable that the 2nd Landlord/Respondent would swear an affidavit to confirm that he had indeed received rents in advance from the 12th, 34th, 49th, 50th and 63rd Tenants.
10. This is quite brazen when looked against the clear orders of the court in the aforesaid judgement in case No. HCCM NO.450 of 2011 as delivered by Justice F. Tuiyott on the 20th January 2020. The court in its Judgement at paragraph 83.4 issued an order specifically directed against the 2nd Landlord/Respondent namely Eric Agbeko as follows:-

“An order of permanent injunction do issue restraining the 1st and 2nd Defendants whether by themselves, agents, employees, assigns, servants or otherwise howsoever and any persons whatsoever from selling, disposing of, charging, pledging, diluting, dealing, interfering with and/or intermeddling in any manner whatsoever with:

 - a. The interested party’s company’s property known as L.R Number 2/186 situated off Elgeyo Marakwet Road within Nairobi’s Kilimani area (“the suit property).
 - b. The shares and shareholding in and of the interested party”.
11. It is important to clarify that the interested party referred to in the aforesaid order is the 1st Landlord/Respondent herein and owned by the 6th and 7th Respondent. Therefore and in our view the affidavit of the 2nd Respondent and the submissions thereof were made in perpetration of contempt of valid court orders and cannot have any probative value. The least said of the same the better and we have determined to respectively disregard the same.



12. The 12th, 34th, 49th, 50th and 63rd Tenants did not dispute the judgement in HCCOM No. 450 of 2011 nor knowledge of the same. From evidence on record, we are persuaded that the 12th, 34th, 49th, 50th and 63rd Tenants/applicants were conversant with the orders of the court and knew that the 2nd Respondent had no capacity to deal with the demised premises and in particular being an agent of the 1st Landlord/Respondent.
13. It is actually an indictment on the 12th and 49th Respondents as advocates of the High Court to claim to have paid rent in advance to the 2nd Respondent/Landlord in obvious contempt of court orders.
14. We are further amazed by the averments and/or assertions by the 12TH, 34TH, 49TH, 50TH AND 63RD Applicants/Tenants that on receiving the letter from M/S Ahmednasir Abdullahi Advocates LLP dated 15th June 2023, that they did not know where to pay their respective rents.
15. These Tenants cannot have been candid with the court. There is no evidence that they made any effort to contact the said advocates whose physical address and other contacts were available on the said letter. In any event, if any uncertainty on who to pay the rents did suffice, and we cannot see any, the best the tenants could have done is to withhold payments of such rents. But to pay such rents with knowledge of the court orders as communicated in the said letter does not demonstrate any good logic and cannot be said to satisfy the principle of reasonableness.
16. In our view, the alleged payments to the 2nd Landlord/Respondent if at all were made in vain. The same could not crystallise into actual payment of rent to the 1st Landlord when looked against the orders of the court orders dated 20th January 2020. The receipts issued thereof by the 2nd Landlord/Respondent in acknowledgement of payment of rent were of no effect towards meeting that obligation.
17. We therefore determine that the 12th, 34th, 49th, 50th and 63rd Applicants did not remit rents to the 1st Landlord/Respondent effective the month of January, 2024 and that they are liable to settle the same. However in relation to the 34th Applicant/Tenant, we appreciate that having vacated the demised premises, the Landlord/Tenant relationship has been extinguished. To that end the jurisdiction of this court in that regard is ousted. The 1st Landlord may pursue the recovery of the rents in arrears as a civil debt in the civil jurisdiction of our courts.
18. The other Applicants totaling to 58 in number appreciated and in good time that they were accountable in respect of rent payment and other related obligations to the 1st Landlord/respondent and by extension to the 6th, 7th and 8th Respondents. That brought quick settlement of their issues against the 1st, 6th, 7th and 8th Respondents. We would therefore excuse them from any costs of this matter.
19. However, on the 12th, 49th, 50th and 63rd applicants, we have no justification to divert from the conventional wisdom of the proviso to Section 27 of the Civil Procedure Act. The same provides that:-

“Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order”.

Having no good reason to refuse the 1st, 6th, 7th and 8th Respondents, costs, we condemn the 12th, 49th, 50th and 63rd applicants to bear their costs.
20. As earlier alluded to, the determination of the issue at hand has fully compromised the application and reference herein both dated 27th December 2023. In essence all the matters that may have been in issue in these proceedings are settled by this Ruling.
21. In the final analysis, the orders that commend to as are the following:-



- i. That the 12th, 49th, 50th and 63rd Tenants owe individual rents to the 1st Landlord from effective the 1st day of January, 2024 to date.
- ii. That the 12th, 49th, 50th and 63rd Tenants/applicants shall pay all such rents that are in arrears to the 1st Respondent through the 8th Respondent, its duly appointed agent within 14 days of the date hereof and in default levy of distress to issue at the costs of the aforementioned Applicants.
- iii. That the 12th, 49th, 50th and 63rd applicants shall pay costs to the 1st, 6th 7th and 8th Respondents assessed at Kshs.100,000/-.
- iv. That both the Application and reference dated 27th December 2024 are marked as settled in terms and this file ordered closed.

Those are the orders of the court.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY OF JULY 2024.

HON. NDEGWA WAHOME, MBS - PANEL CHAIRPERSON

HON. JOYCE MURIGI - MEMBER

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Ruling delivered in the presence of M/S Barako for the 1st, 6th and 7th Respondents. Also holding brief for Mr. Sagana for the 8th Respondent, M/S Maina for the Tenants/Applicants.

Court: The parties to be supplied with a certified copy of the Ruling on payment of the requisite court fees.

HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI

PANEL CHAIRPERSON MEMBER

BUSINESS PREMISES RENT TRIBUNAL BPRT

