



Otieno v Mohamed (Tribunal Case 54 of 2019)
[2023] KEBPRT 1286 (KLR) (3 November 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1286 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 54 OF 2019
CN MUGAMBI, CHAIR
NOVEMBER 3, 2023

BETWEEN

GORDON OTIENO LANDLORD

AND

JUNET MOHAMED TENANT

RULING

Introduction

1. The landlord's application dated 16.6.2023 seeks orders to the effect that the orders issued by the Tribunal on 21.10.2021 dismissing the landlord's suit be set aside and the suit be reinstated. The Applicant also seeks an order that this suit be consolidated with BPRT Case No. E389 of 2023, Gordon Otieno vs Junet Mohammed.

The landlord's depositions

2. The landlord's affidavit in support of his application may be summarized as follows:-
 - a. That he filed the instant suit on 27.6.2019 and the reference herein was served upon the tenant who entered appearance.
 - b. That the Respondent filed before the Tribunal a replying affidavit dated 31.7.2019.
 - c. That the Applicant expected the Tribunal to fix the matter for hearing but he was never notified of any hearing dates to enable him attend the Tribunal for hearing.
 - d. That the Applicant later learnt that the suit was dismissed for non-attendance on 21.10.2021.
 - e. That the landlord/Applicant was not served with any notice to show cause.



- f. That the Applicant finds himself in this unfortunate situation because he was acting in person and not well versed with the Tribunal procedures.
 - g. That the non-attendance to the Tribunal was not deliberate on the part of the Applicant.
 - h. That the Applicant has filed another case, BPRT Case No. E389 of 2022 against the same tenant and which he wishes consolidated with the instant suit upon reinstatement.
 - i. That the tenant/Respondent will not suffer any prejudice if the orders sought are granted.
3. On 8.9.2023, Counsel for the tenant, on his application was granted seven (7) days to file his client's response to the application. The tenant/Respondent, as at the time of writing this ruling has not filed any replies to the landlord's application and has not filed their submissions either. As things stand now, the landlord's application is unopposed.
4. The reference filed by the landlord in this matter sought orders of eviction of the tenant who allegedly had been served with a notice to terminate tenancy under Section 4(2) of [Cap 301](#) and which notice the tenant is said to have failed to oppose. I do note from the record that the landlord, at the time of filing this matter was demanding for the payment of rent arrears in the sum of Kshs. 1,610,000/=.
5. I do not think the tenant will suffer any prejudice if the orders sought are granted for the reasons that the tenant is still in possession of the premises and also due to the fact that both cases raise the same issues and they are between the same parties.
6. Consequently, I allow the landlord's application dated 16.6.2023 and make the following orders:-
- a. That the order of 21st October dismissing the landlord's suit for want of prosecution be and is hereby set aside and the suit is reinstated for hearing.
 - b. That this suit be and is hereby consolidated with BPRT Case No. E389 of 2023, Gordon Otieno vs Junet Mohamed.
 - c. Costs in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF NOVEMBER 2023

HON. CYPRIAN MUGAMBI

CHAIPERSON

3.11.2023

Delivered in the absence of the parties.

