



**Anthony M'mosi c/o R.H.R.C. Church v Shaban Kinungu c/o Said Shaban Kinungu Family & another (Tribunal Case E054 of 2021) [2023] KEBPRT 1280 (KLR) (8 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1280 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E054 OF 2021  
CN MUGAMBI, CHAIR  
SEPTEMBER 8, 2023**

**BETWEEN**

**ANTHONY M'MOSI C/O R.H.R.C. CHURCH ..... APPLICANT**

**AND**

**SHABAN KINUNGU C/O SAID SHABAN KINUNGU  
FAMILY ..... 1<sup>ST</sup> RESPONDENT**

**RICHARD OMONDI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. The 2<sup>nd</sup> Respondent's notice of preliminary objection dated 9.5.2023 is brought on the grounds that:-

“This Honourable Court lacks jurisdiction to deal conclusively with this matter whose dispute is over ownership of plot no Kwale/Ukunda/200.”

**The 1<sup>st</sup> Respondent's Submissions**

2. The 1<sup>st</sup> Respondent has submitted that he fully agrees with the preliminary objection raised by the 2<sup>nd</sup> Respondent.

The 2<sup>nd</sup> Respondent has further submitted that the grounds upon which the Tenant brought his Application clearly indicate that the Application is based on ownership of plot no Kwale/Ukunda/200 and not possession of the business premises as alleged.

**The 2<sup>nd</sup> Respondent's Submissions**

3. The 2<sup>nd</sup> Respondent has submitted that the dispute herein is one over the ownership of the suit property and therefore one which ought to be determined by the Environment & Land Court.



## **Analysis and Determination**

4. The Tenant/Applicant has brought this suit in his own name care of H.R.C. CHURCH. It is not clear at this stage whether the Tenant is suing in her own name or whether it is R.H.R.C. CHURCH which has brought these proceedings. I am not therefore able at this stage to determine the capacity of both parties to bring these proceedings.
5. The 2<sup>nd</sup> Respondent's preliminary objection is brought on the basis that the Tribunal lacks jurisdiction to hear this matter for the reason that the dispute is over the ownership of the suit land. But is this so? I think the Tenant herein has brought the suit against the Respondents on the basis that he is a Tenant of the 2<sup>nd</sup> Respondent who bought the suit land from the 1<sup>st</sup> Respondent. I do not understand the Tenant to be claiming the suit land as belonging to him.
6. I am further of the view that in order to establish the various issues raised in the parties submissions and the pleadings in this matter, the Tribunal will have to consider affidavit evidence, for example it is critical in this matter to establish whether there exists a landlord/Tenant relationship between the Applicant and each or both of the Respondents, whether the 2<sup>nd</sup> Respondent purchased the suit land from the 1<sup>st</sup> Respondent, whether the 1<sup>st</sup> Respondent is deceased and whether therefore he could be sued?, whether the tenancy of the 2<sup>nd</sup> Respondent with the 1<sup>st</sup> Respondent expired, whether the 2<sup>nd</sup> Respondent had the landlord's consent to sublet the premises amongst other issues.
7. The above issues cannot be determined by way of notice of preliminary objection, the court would require to consider evidence.
8. In the circumstances, I find no merits in the notice of preliminary objection dated 9.5.2023 and the same is hereby dismissed with no orders as to costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

**HON. CYPRIAM MUGAMBI**

**CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Mr. Kamau for the 1<sup>st</sup> Respondent

In the absence of the other parties

### **Further Orders**

The parties to comply with order 11 of the Civil Procedure Code within the next thirty-one (31) days.

Reference will proceed for hearing on 19.10.2023 virtually.

Hearing notice to issue.

**HON. CYPRIAM MUGAMBI**

**CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

