



**Macharia v Delamere Holdings Limited (Tribunal Case E607 of 2021)
[2024] KEBPRT 1232 (KLR) (14 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1232 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E607 OF 2021
CN MUGAMBI, CHAIR
AUGUST 14, 2024**

BETWEEN

ALICE MACHARIA TENANT

AND

DELAMERE HOLDINGS LIMITED LANDLORD

RULING

Introduction

1. The Tenant's Application dated 22.4.2024 seeks orders that the Tribunal be pleased to review and set aside its ruling delivered on 11.4.2024 and any subsequent orders. The Applicant/Tenant has also sought the costs of the Application.

The Tenant's depositions

2. The Tenant's affidavit in support of her Application may be summarized as follows:-
 - a. That the Tribunal's ruling delivered on 11.4.2024 gave the Tenant seven (7) days to pay the filing fees but unbeknown to the court, the amount had been paid, albeit by the Landlord/Respondent on 10.11.2021 erroneously.
 - b. That on 2.4.2024, the Tenant sent Kshs 98,000/= to the Counsel for the Landlord to reimburse what the Landlord had paid as the Tenant could not pay the filing fees on the Judiciary platform.
 - c. That the money sent to Counsel for the Landlord was not rent but filing fees.
 - d. That the Reference was properly filed as at the time the Ruling was delivered on 11.4.2024 and the Tenant is therefore greatly prejudiced by the Ruling of the court.
 - e. That in the circumstances, the Tenant's Reference ought to be reinstated for hearing.



3. In opposing the Application, the Landlord has filed amended grounds of opposition as follows:-
 - a. That the Application is fatally defective and an abuse of the court process.
 - b. That the Application is res judicata, the court having heard and determined the preliminary objection dated 1.5.2024.
 - c. The Applicant has not met the conditions necessary for the grant of orders for review envisioned by order 45 of Rule 1 of the Civil Procedure Rules.

Analysis and determination

4. The only issue that arises for determination in this Application is whether the Tenant is entitled to the orders of review she has sought in her Application.
5. The Ruling that the Tenant seeks to have set aside is the one dated 11.4.2024. The Tenant's argument is that she had paid the requisite filing fees by way of a refund to Counsel for the Landlord on 2.4.2024 before the court delivered its ruling. In order to understand how the court arrived at the ruling, it is important to go back on the court record as I now do.
 - a. On 21.3.2023, Counsel for the Landlord informed the court that there was no competent reference before the court. Counsel stated that the Landlord erroneously paid the assessed fees of Kshs. 93,583/= and on 11.5.2022, Counsel for the Landlord wrote to Counsel for the Tenant requesting for a refund of the fees erroneously paid. Counsel pressed on that the Tenant needed to demonstrate that he had actually paid the filing fees, failing which the said Counsel urged the court to find that there was no compliance with Section 6 of the Act.
 - b. On the same day and during the same proceedings, Counsel for the Tenant admitted that his client had not paid the filing fees but undertook to pay the same.
 - c. The court on the same day, made the following orders:-

“The Counsel for the Tenant confirms that the Tenant did not pay for the reference but requests for some time to make the necessary payments. I will make a ruling in this matter on whether or not there is a competent reference before the court on 3.4.2024.”
 - d. On 3.4.2024, Counsel for the Tenant did not attend court but Counsel for the Landlord attended court. The directions/ruling in the matter was pushed to 10.4.2024. No mention of any payments was made by Counsel for the Landlord
 - e. Eventually on 11.4.2024, the court made the following directions:-
 - i. That the Tenant will pay the assessed court fees for her reference within the next seven days failing which the reference will stand struck out and the Landlord's notice dated 5.8.2021 will stand approved in its entirety.
 - ii. That the Tribunal will refund the fees paid by the Landlord on account of the assessment for the Tenant's reference dated 18.10.2021.
 - iii. That the matter be mentioned on 19.4.2024 for further directions.



6. From the above ruling, the Tenant was granted seven days to pay the filing fees to the Tribunal. If indeed she tried to pay the fees and she encountered difficulties, I have seen no evidence of such difficulty as it does not seem to have been brought to the attention of the Tribunal.
7. If on the other hand the Tenant had indeed paid the filing fees to the Landlord's Counsel as deposed in her affidavit, then the best time to have brought this to the attention of the Tribunal was within the seven days granted by the Tribunal and before which the notice by the Landlord would become effective.

The failure by the Tenant to take any action within the seven days window offered by the court effectively meant that the court orders of 11.4.2024 became self-executing.
8. The Tenant only filed her Application on 23.4.2024 being after the timelines set out in the Ruling of 11.4.2024 had lapsed. The information that the Tenant had paid any money to Counsel for the Landlord ought to have been brought to the attention of the court anytime within the seven days granted by the court. In my view therefore, the Tenant came to court when the horse had already bolted.
9. It may also help to note that the Tribunal was determining the competency of the reference filed by the Tenant as at 21.3.2024 and not as at 2.4.2024 when the Tenant says she refunded the filing fees to the Landlord's Counsel.
10. I am not therefore convinced that there has been a discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the Tenant, or could not be produced by her at the time the order was made. I am further not convinced and nor has the Applicant alleged that there was an error or mistake on the face of the record. (see order 45 Rule 1(1) of the Civil Procedure Rules).
11. Consequently, I do not find any merits in the Tenant's Application dated 23.4.2024 and the same is dismissed with costs to the Landlord.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF AUGUST, 2024.

HON. CYPRIAN MUGAMBI - CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Miss Mwai for the Landlord and in the absence of the Tenant and Counsel.

