



**Kane v Njoroge (Tribunal Case E199 of 2023)  
[2023] KEBPRT 1149 (KLR) (Civ) (24 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1149 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E199 OF 2023  
P MAY, MEMBER  
NOVEMBER 24, 2023**

**BETWEEN**

**OWEN WACHIRA KANE ..... TENANT**

**AND**

**MONICA WANJIRU NJOROGE ..... LANDLADY**

**RULING**

1. The application before me is the tenant's notice of motion dated 31<sup>st</sup> July, 2023 brought by way of certificate. The application sought to set aside the orders issued on 27<sup>th</sup> April, 2023 which dismissed the application and reference filed by the tenant. The tenant has stated that the orders issued are adverse and were made without granting him an opportunity to be heard. The application has been opposed by the landlady who also states that the tenant has been a habitual rent defaulter and has even in the course of these proceedings failed to pay rent as when it fell due.
2. The parties elected to canvass the application by way of written submissions. I have considered the same and would proceed as follows:
3. The principles upon which an application for setting aside an ex-parte judgment is considered were long settled in the locus classicus Case of; *Shah – vs- Mbogo* (1967) EA 116 at page 123 as follows:-

“I have carefully considered in relation to the present application the principles governing the exercise of the court's discretion to set aside a judgment obtained ex-parte. This discretion is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought, whether by evasion or otherwise to obstruct or delay the course of justice”.



4. In the instant proceedings, the applicant's submission lays blame on the failure by the court registry to inform them of the hearing date. There is nothing on record to show that the applicant was diligent in pursuing its application and reference.
5. It is the role of an applicant and his counsel to ensure that the case proceeds for hearing without wasting the precious Tribunal time. In the case of; *Utalii Transport Co. Ltd and 3 Others -vs- N.I.C. Bank and Another* (2014) eKLR, the court held that:
 

“It is the primary duty of the plaintiffs to take steps to progress their case since they are the ones who dragged the defendant to court.”
6. It is also the duty of the parties to assist the court to adjudicate on the matters brought before it expeditiously as was held in *Gideon Sitelu Konchella vs Daima Bank Limited* (2013)eKLR where the court while citing the case of; *Mobil Kitale Service Limited vs Mobil Oil Kenya Limited*, held that:-
 

“It is in the interest of justice that litigation must be conducted expeditiously and efficiently so that injustice by delay would be a thing of the past. Justice would be better served if we dispose of matters expeditiously ....the overriding objection of this Act and Rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.”
7. The applicant herein has stated that they were not aware the hearing date yet the record conveys as different message as they were present in the Tribunal on 1<sup>st</sup> March, 2023 when the reference was set down for hearing on 27<sup>th</sup> April, 2023. The applicant's counsel would have easily verified this information and advised their client to desist on casting unfounded allegations and lies against the Honourable Tribunal.
8. The legal threshold to consider before exercising the discretion to set aside or review an order is whether the applicant has demonstrated a sufficient cause warranting setting aside of the ex-parte decision or proceedings. In *Wachira Karani v Bildad Wachira* [2016] eKLR, the Court held that:
 

“Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Sufficient cause is a question of fact and the Court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straight-jacket formula of universal application. Thus, the defendant must demonstrate that he was prevented from attending Court by a sufficient cause...”
9. In the case of; *BML v WM* [2020] eKLR, the Court of Appeal cited with approval the he Supreme Court of India in Civil Appeal 1467 of 2011 *Parimal vs Veena Bharti* [2011], where sufficient cause was defined as follows:
 

“Sufficient cause means that the parties had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been ‘not acting diligently ...’
10. Further, in the case of; *The Hon Attorney General v the Law Society of Kenya & Another*, Civil Appeal (Application) No. 133 of 2011 sufficient cause was defined as:-
 

“Sufficient cause” or “good cause” in law means: .....the burden placed on a litigant (usually by Court rule or order) to show why a request should be granted or an action excused”. See



Black's Law Dictionary, 9<sup>th</sup> Edition, page 251. Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubts in a judge's mind. The explanation should not leave unexplained gaps in the sequence of events."

11. It is trite that this Tribunal in conducting its proceedings and functions is guided by Article 159 of the [Constitution](#) and the principles of Natural Justice. Having stated the above this Tribunal even though having found the grounds set in the application wanting is inclined toward allowing the same in the interest of justice.
12. In the case of; [Patriotic Guards Ltd. V. James Kipchirchir Sambu](#), Nairobi CA NO. 20 OF 2016, [2018] KLR, the Court stated:

"It is settled law that whenever a Court is called upon to exercise its discretion, it must do so judiciously... judicious because the discretion to be exercised is judicial power derived from the law and as opposed to judge's private affection or will. Being so, it must be exercised upon certain legal principles and according to the circumstances of each case and the paramount need by Court to do real and substantial justice to the parties in the suit."
13. The Tribunal is further guided by the decision Garissa ELC No 9 of 2018 [Abdi Noor Shurie Vs Bundid](#), where the court stated;

"I note that the Plaintiff nonetheless filed his documents in compliance with order 11 although after the suit had been dismissed and taking cognizance of Article 50 of the Constitution on the right to be heard and hold that where a suit can be prosecuted and justice done in spite of the delay in its prosecution, a party should be given a chance to do so.

It is a serious matter to shut out a party from being heard unless such party is deliberately seeking to undermine or obstruct the course of justice."
14. Before I make the final orders, it is prudent to remind the applicant that a case belongs to a litigant and it is upon the litigant to follow up his case, and show the steps taken to do so.
15. In the end the Tribunal allows the application to set aside the orders issued on 27<sup>th</sup> April, 2023 on the following conditions:
  - a. The applicant shall file proof of payment of rent as directed by the Tribunal on 28<sup>th</sup> September, 2023.
  - b. The applicant shall pay the rent for the months of October, November and December within 7 days from the date hereof.
  - c. The applicant shall pay the landlady throw away costs assessed at Kshs. 15,000 within 7 days from the date hereof.
  - d. The tenant is granted a temporary order of injunction pending the hearing and determination of the reference subject to compliance with orders a, b and c above.
  - e. The parties shall file and exchange any documents and statements that they shall seek to rely during hearing within 14 days.
  - f. These orders shall lapse automatically if the tenant fails to strictly adhere to the conditions issued in a, b and c above.



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**HON. PATRICIA MAY**

**MEMBER**

**24.11.2023**

**In the presence of;**

Monica Wanjiru Njoroge- the Landlady

Muthoni holding brief for Ngaruiya for the Tenant

