



**Kiruki v Mohamed & another (Tribunal Case E144 of 2024)
[2024] KEBPRT 1642 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1642 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E144 OF 2024
A MUMA, MEMBER
NOVEMBER 15, 2024**

BETWEEN

TOM MURIUNGI KIRUKI TENANT

AND

ZACHARIA MOHAMUD MOHAMED 1ST RESPONDENT

OMAR SULEIMAN 2ND RESPONDENT

RULING

A. Parties and their Representatives

1. The Applicant is the tenant (the “Tenant”) of a shop premises located within Mwatamba area within Mombasa County in the Republic of Kenya.
2. The firm of Marende Necheza and Company Advocates represents the Tenant in this matter.
3. The 1st Respondent is the alleged lawful owner of the suit premises and hence the Landlord while the 2nd Respondent is the alleged agent of the Landlord and the manager of the suit premises.
4. The firm of Kututa & Company Advocates represents the 1st & 2nd Respondents in this matter.

B. Dispute Background

5. The Tenant moved this Tribunal vide a Reference dated 5th June 2024 and a Notice of Motion under a Certificate of Urgency evenly dated seeking Orders inter alia; that the Respondents be compelled to open the suit premises, that the Landlord be restrained from harassing and evicting or in any way interfering with the quiet possession of the suit premises, that the Tenant be allowed to proceed with the renovations and be compensated by the Landlord for the period that the premises remained closed.



6. Upon considering the Tenant's Application, this Court issued interim Orders dated 6th June 2024 compelling the Landlord to open the premises failure to which the Tenant had liberty to break in and replace the door locks, further the Landlord was restrained from evicting and harassing the Tenant and that the Tenant serves the Reference and Application upon the Landlord for hearing on 20th June 2024 and thereafter, file and Affidavit of Service.
7. In response to the Tenant's Reference and Application, the Landlord subsequently filed a Replying Affidavit dated 15th July 2024 and Application evenly dated, seeking Orders to strike out the Tenant's Reference and Application and that the costs of the said Application be provided for.
8. The Tenant thereafter filed a Further Affidavit dated 16th August 2024 while the Landlord filed his Further Affidavit on the even date.
9. It is the Tenant's Reference and Application dated 5th June 2024 and the Landlord's Application dated 15th July that are the subject of this Ruling.

C. The Tenant's Case

10. The Tenant Application is based on the grounds that he has been in occupation of the suit premises and paying rent accordingly. He avers that on 15th May 2024, the Landlord, in an oral agreement, allowed him to renovate a shop space in one of the back rooms and take up the same at a rate of KShs. 10,000.00.
11. It is the Tenant's case that once he began the renovations, the Landlord and the Caretaker confiscated the keys of the premises and locked the same without any justification.
12. Further, the Tenant claims that the Landlord has issued him with a verbal notice to vacate and has continually intimidated him and his employees with the intention of frustrating him.

DIVISION - D. The Landlord's Case

13. The Landlord avers that the Tenant's Application is misleading and untrue and crafted to distort facts. Vide his Affidavit dated 15th July 2024, the Landlord avers that he is a proper party to this suit for the reason that he is not the landlord of the suit premises and therefore, there is no tenancy relationship between him and the Tenant.
14. Further, the Landlord claims that the receipts produced by the Tenant clearly indicate that the Tenant pays rent to Al Yamza Ent Limited and one payment made to him is not conclusive proof that there exists a tenancy relationship.
15. In absence of a tenancy relationship, the Landlord prays that this Court strikes out the Tenant's Reference and Application.

E. Issues For Determination

16. I have given full consideration to the materials placed before this Court. It is my considered opinion that the sole issue for determination is;

Whether there exists a tenancy relationship between the Landlord and the Tenant herein.



F. Analysis and Determination

17. It is noteworthy that the jurisdiction of this Court can only be exercised where there exists a controlled tenancy. Section 2 of Cap 301 defines a controlled tenancy as:

“Controlled tenancy” means a tenancy of a shop, hotel or catering establishment—

- a. which has not been reduced into writing; or
 - b. which has been reduced into writing and which—
 - i. is for a period not exceeding five years; or
 - ii. contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
- relates to premises of a class specified under subsection (2) of this section.
18. I have carefully perused the materials placed by all parties to this suit. I have observed that neither party has produced a written agreement that is for a period of not less than 5 years and containing a provision for termination otherwise than for breach of covenant within 5 years from the commencement of the tenancy.
19. The Tenant claims there is a controlled tenancy and has produced receipts of rent payment since January 2024 issued to him by Al Yamza Ent. Limited, a company that can be presumed to be the landlord of property manager of the suit property.
20. However, the Tenant failed to include Al Yamza limited as a party to this suit and further, failed to demonstrate a connection between the Landlord herein and the said company that issued receipts. I am not convinced that a single Mpesa message demonstrating a payment to the Landlord herein is sufficient evidence of a tenancy relationship since the Tenant has been occupying the premises for a while.
21. Further, the Tenant has not demonstrated the cost incurred in renovating the premises and the loss occasioned due to closure of the premises by the purported Landlord.
22. The contention by the Landlord that he is not a proper party to this suit cannot be overlooked. This is because Court Orders cannot be issued in vain. They must be obeyed and complied with. In the circumstances, to whom will these orders be directed if the Respondent is not the Landlord?

G. Determination

23. In the upshot, the following Orders shall abide:
- a. Tenant’s Reference and Application dated 5th June 2024 is hereby dismissed;
 - b. The Landlord’s Application dated 15th July 2024 is allowed;
 - c. Tenant is at liberty to file a fresh Reference and Application with proper parties; and
 - d. Each party shall bear its own costs.

HON. A MUMA

MEMBER



RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 15TH DAY OF NOVEMBER 2024 IN THE ABSENCE OF THE PARTIES.

