



Kareithi (Suing as the Administrator and Beneficiary of the Estate of the Late Grace Warui Kariithi - Deceased) v Kariithi (Tribunal Case E578 of 2023) [2023] KEBPRT 1210 (KLR) (Civ) (5 December 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1210 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E578 OF 2023
CN MUGAMBI, CHAIR
DECEMBER 5, 2023**

BETWEEN

WILSON KANYI KAREITHI (SUING AS THE ADMINISTRATOR AND BENEFICIARY OF THE ESTATE OF THE LATE GRACE WARUI KARIITHI - DECEASED) APPLICANT

AND

JOHNSON GACOKI KARIITHI RESPONDENT

RULING

1. The Landlord/Applicant's application dated 5.6.2023 seeks orders that the Landlord be allowed to break in and gain access to the leased business premises, that the tenant be ordered to give vacant possession of the leased premises and that the OCS, Ruai police station to ensure compliance with the orders of the Tribunal.

The Landlord/Applicant's Depositions

2. The Applicant's affidavit sworn on 5.6.2022 in support of the application may be summarized as follows:-
 - a. That all the parties are children of the deceased Grace Warui Kariithi who passed on in the year 2009.
 - b. That the Applicant has since petitioned for letters of administration of the Estate of his deceased mother and Land Parcel No. 105/485 (Ruai) is listed as one of the assets of the deceased.



- c. That the Applicant and the other beneficiaries of the Estate of the deceased Grace Warui Kariithi leased the suit property to the Respondent and from there the Respondent runs his business.
- d. That the Respondent owes the Applicant rent arrears amounting to Kshs. 1,380,000/= being the rent for eight years.
- e. That on 8.11.2022, the Respondent was served with a notice to vacate the premises but he has failed to vacate, consequently, the Applicant has been unable to access the suit premises and the Estate of the deceased Grace Warui Kariithi continues to incur losses which may become unrecoverable.

The Respondent's Deposition

3. The Respondent's replying affidavit sworn on 20.6.2023 may be summarized as follows:-
 - a. That the complainant is hopelessly defective and a non-starter.
 - b. That like the Applicant, and the other beneficiaries, the Respondent is also a beneficiary of the Estate of the late Grace Warui Kariithi.
 - c. That there exists no landlord/tenant relationship between the Applicant and the Respondent and this Tribunal therefore lacks the jurisdiction to hear and determine this matter.
 - d. That the grant to the Estate of the deceased Grace Warui Kariithi is yet to be confirmed and parties seeking to intermeddle with the Estate are in contravention of Section 10 of the [Law of Succession Act](#) Cap 160 of the Laws of Kenya.
 - e. That the confirmation of a grant of letters of administration is subject to satisfying the court that the respective identities and shares of all persons benefiting and entitled is in place.
 - f. That the Respondent does not operate any business in the alleged property described as Ruai L.R. No. 105/485.
 - g. That no party can seek to benefit from any property of the deceased when such property has not devolved to that beneficiary.
 - h. That since July 2022, the Applicant has not taken any steps to have the grant confirmed.
 - i. That any issues concerning the Estate of the deceased can only be canvassed in Succession Cause No. 343 of 2018 Nairobi High Court.

The Applicant's supplementary affidavit may be summarized as follows

4. That via various whatsapp correspondences, the Respondent has admitted to owing rent to the Estate of the deceased Grace Warui Kariithi.
5. The Applicant has deponed in his supplementary affidavit that the correct parcel number for the suit premises is Ruai 105/482 and not Ruai 105/485 which mistake arose out of a typing error, the Respondent operates a bar and restaurant business in the premises.
6. The Applicant has further deponed that at a family meeting held on 16.7.2023, the Respondent agreed to liquidate the rent arrears in three calendar months.



Analysis and determination

7. The issues that arise for determination in this application in my view are the following:-
- Whether there exists a landlord/tenant relationship between the parties herein and whether the Tribunal has the jurisdiction to hear and determine this matter.
 - Whether this matter should be properly heard before the High Court in succession Cause Number 343 of 2018, NBI, The Estate of the late Grace Warui Kariithi.
 - Whether the Applicant is entitled to the orders sought in his application.

Issue A

8. The Applicant in his affidavit in support of his application has deponed at paragraph 6 that himself and the other beneficiaries leased to the Respondent the suit property pending the final determination of the Petition for letters of administration to the Estate of their late mother. The Applicant has claimed in his affidavit that the “tenant” has not paid rent for eight years amounting to Kshs. 1,380,000/=. The grant of letters of administration annexed to the Applicant’s affidavit was issued on 26.7.2022. Clearly therefore before July 2022, the Applicant had no capacity to enter into any contractual arrangements on behalf of the Estate of his deceased mother.
9. I have gone through the documents filed by the Applicant and I have not found any evidence of the allegation that the Respondent is the tenant of the Applicant and the other beneficiaries. There is no evidence of an oral or written agreement between the parties. Further, the Applicant has not demonstrated that the Respondent ever paid any rent to him, the other beneficiaries or the Estate. The Applicant has not shown how the Respondent came to be in the suit premises and as it is, the landlord who alleges that the Respondent is his tenant and/or the tenant of the Estate of the deceased Grace Warui Kariithi, the burden to prove this allegation clearly and legally fall on the Applicant.
10. It is agreed between the parties that all of them are children of the deceased Grace Warui Kariithi. It is also not disputed that the Respondent is a beneficiary of the Estate of the said deceased and is therefore entitled to a share of the Estate of the deceased. The Applicant has been issued with the grant of letters of administration of the Estate of the deceased but, it is also true that the Estate has not been distributed amongst the beneficiaries. In the circumstances, no one beneficiary can claim any specific asset of the Estate until distribution has fully taken place upon confirmation of the grant.
11. On this issue, I do therefore find that there does not exist any landlord/tenant relationship between the parties and consequently, the Tribunal lacks the jurisdiction to hear and determine this matter.

Issue B

12. The Respondent has submitted that any issues concerning the Estate of the deceased can only be canvassed in Succession Cause No. 343 of 2018 *in the matter of the Estate of Grace Warui Kariithi (deceased)*.

I have read the minutes of the meeting of the parties formally held on 16.7.2023. what emerges from the minutes of the meeting is a desire to distribute the Estate of their deceased mother. One of the resolutions was that;

“Members present agreed to own Mum’s estate jointly through Benewa Limited and later sell the property if possible.”



The assets of the Estate of the deceased having not been distributed, I agree with the Respondent that all disputes relating to the said Estate ought to be handled before the court dealing with the Succession Cause. The extent of the benefits derived by various beneficiaries from the Estate before confirmation of grant and eventual distribution to individual parties is a matter best left to the Succession court.

Issue C

13. Even if I was to be wrong on the above findings, would the Respondent be entitled to the prayers sought in his application and complaint?

The Applicant seeks to be allowed to break into the suit premises and therein gain access. He further seeks to have the Respondent give vacant possession of the suit premises. The ground upon which these prayers are sought is that the Respondent owes rent for eight years amounting to Kshs. 1,350,000/=.

14. The Applicant's prayer for breaking into the suit premises is not clear as to what the Applicant intends to do once he gains access to the premises but in the circumstances, I will assume the access is to allow the Applicant to levy distress. The rent account exhibited by the Applicant dates back to the year 2014 while the Applicant only obtained the grant of representation to the Estate of the deceased in July 2022. Prior to the year 2022, the Applicant had no capacity to agitate on behalf of the estate of the deceased. The demand for Kshs. 1,380,000/= is therefore not sustainable.
15. The Applicant's prayer that the tenant be ordered to render vacant possession is also not tenable. Even assuming there exists a landlord/tenant relationship between the parties, the Applicant would have been required to issue the notice to terminate tenancy under Section 4 of Cap 301 for reasons to have been provided. The letter dated 8.11.2022 from the Estate of the late Grace Warui Kariithi addressed to the Respondent does not amount to the notice required under Section 4 of Cap 301 and is therefore invalid and of no consequence.
16. I am therefore not convinced that the Applicant's application dated 5.6.2023 has merit and the same is dismissed with costs to the Respondent.
17. Having earlier found that the Tribunal has no jurisdiction to hear and determine this matter, the complaint filed by the Applicant herein is also dismissed with costs to the Respondent.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF DECEMBER 2023.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

5.12.2023

Delivered in the absence of the parties.

