



**Kiraithe v Gichuki (Tribunal Case E1184 of 2022)  
[2023] KEBPRT 1158 (KLR) (Civ) (4 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1158 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E1184 OF 2022  
CN MUGAMBI, CHAIR  
DECEMBER 4, 2023**

**BETWEEN**

**FRNKLINE KIRAITHE ..... APPLICANT**

**AND**

**SIMON GICHUKI ..... RESPONDENT**

**RULING**

1. The landlord's notice of motion dated 13.7.2023 seeks an order that the Tribunal be pleased to set aside the ruling and all consequential orders made on 16.6.2023 pending the hearing and determination of the application inter partes. I believe the Applicant did not intend this prayer to be an interlocutory prayer as drafted.
2. The basis of the landlord's application is that he had filed a notice of preliminary objection which was not heard and that further the Tribunal proceeded to deliver its ruling and closed the file with an order that the landlord was to bear the costs of the suit.
3. The tenant has filed an affidavit in reply to the application where he has deponed that the preliminary objection is scandalous, far-fetched, unsubstantiated and predicated on the wrong premise.
4. The landlord has claimed that the suit premises is residential which claim the tenant has specifically denied. At paragraph 20 of his replying affidavit, the tenant depones as follows:-

“that I have occupied two rooms in the landlord's premises in which one I use as a store for church equipment and the other used by my church caretaker to keep vigilant and where also some church instruments are kept and the caretaker is to keep security, church maintenance and make sure church equipment are safe.”



This would appear to present a mixed use arrangement where some premises is used as the store and the other one where the caretaker lives, probably as a residential unit.

5. From the record, I do note that on 8.2.2023 Mr. Momanyi Counsel appearing for the tenant informed the court that there were two pending applications and a notice of preliminary objection. Further on 9.3.2023, Mr. Muasa informed the court that they had filed a report showing that the suit premises was a residential property.
6. It is therefore clear that the landlord's notice of preliminary objection which was challenging the jurisdiction of this court was not heard and the Tribunal proceeded to deliver a ruling in this matter before concluding the arguments on the preliminary objection. Clearly, this was an error on the part of the Tribunal.
7. While emphasizing on the need for a court to satisfy itself that it has the requisite jurisdiction to hear and determine a matter, the court in the case of; *Phoenix E.A. Assurance Company Limited v S.M. Thiga t/a Newspaper Services* [2019] EKLK, stated as follows:-

“In common English parlance, jurisdiction denotes the authority or power to hear and determine judicial disputes or even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be a nullity ab-initio and any determination made by such court will be amenable to being set aside ex debito justitiae.”
8. Ex debito justitiae is defined as an obligation arising out of the justice of the matter where judicial review is available. The principle of ex debito justitiae is founded on a recognition of a debt that the justice delivery system owes to a litigant to correct an error in a judicial dispensation. Its application by the very nature of things cannot be made to depend on varying perceptions of legal omissions and commissions but such recognition of the debt which have the potential of opening new vistas of exercise of jurisdiction to relook concluded cases ...”
9. I think this is a proper case for the setting aside of the ruling of the Tribunal dated 16.6.2023 and all consequential orders ex debito justitiae, i.e. as a matter of right.
10. In order to expedite this matter, I will order that the parties take directions on the preliminary objection filed by the landlord and dated 23.3.2023.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 4<sup>TH</sup> DAY OF DECEMBER 2023.**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**4.12.2023**

Delivered in the presence of Mr. Frankline Kiraithe- the tenant in person

In the absence of the landlord/Applicant

