



**Kangai & 11 others v East Coast Horizon Limited & 3 others (Tribunal Case E997, E926 & E850 of 2023 (Consolidated)) [2024] KEBPRT 337 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 337 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**TRIBUNAL CASE E997, E926 & E850 OF 2023 (CONSOLIDATED)**  
**A MUMA, AG. CHAIR & J ROP, MEMBER**  
**MARCH 14, 2024**

**BETWEEN**

**BRENDAH KANGAI ..... 1<sup>ST</sup> APPLICANT**  
**EMMACULATE AUGUSTINE ..... 2<sup>ND</sup> APPLICANT**  
**LYDIA MUTHOKA ..... 3<sup>RD</sup> APPLICANT**  
**DAN KANOKA ..... 4<sup>TH</sup> APPLICANT**  
**PAUL OMIDO ..... 5<sup>TH</sup> APPLICANT**  
**JANE GAKII ..... 6<sup>TH</sup> APPLICANT**  
**BRENDA MAINA ..... 7<sup>TH</sup> APPLICANT**  
**KASSAM MOHAMMED ..... 8<sup>TH</sup> APPLICANT**  
**MARY MBUTHI ..... 9<sup>TH</sup> APPLICANT**  
**VERONICA MUMBE KINYILI ..... 10<sup>TH</sup> APPLICANT**  
**ANGELLA MUTINDI KIVIU ..... 11<sup>TH</sup> APPLICANT**  
**VICTOR WAWERU ..... 12<sup>TH</sup> APPLICANT**

**AND**

**EAST COAST HORIZON LIMITED ..... 1<sup>ST</sup> RESPONDENT**  
**JOSEPH KAMAU ..... 2<sup>ND</sup> RESPONDENT**  
**MAPKA INVESTMENT LIMITED ..... 3<sup>RD</sup> RESPONDENT**  
**PETER MACHARIA KARIUKI ..... 4<sup>TH</sup> RESPONDENT**



## **RULING**

### **A. Parties and Representatives**

1. The Applicants (hereinafter as “the Sub-tenants”) rented space for the purposes of carrying out business activities at the business premises located at Lords House erected on L.R 209/136/247 within Nairobi County (hereinafter referred to as “the suit premises”).
2. The Sub-tenants have no legal representatives hence collectively appear in person.
3. The 1<sup>st</sup> Respondent is the Tenant (hereinafter referred to as “the Tenant”) and has sublet the suit premises to the Sub-tenants. The 2<sup>nd</sup> Respondent is the Director of both the 1<sup>st</sup> Respondent and Geotech Limited, an Applicant in case no. BPRT E926/2023.
4. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have no legal representatives hence both appear in person.
5. The 3<sup>rd</sup> Respondent herein is the Landlord and the registered owner of the suit premises (hereinafter referred to as “the Landlord”) and has sublet to the Tenant. The 4<sup>th</sup> Respondent is the Director Shareholder of the 3<sup>rd</sup> Respondent.
6. The firm of Messrs Othieno & Company Advocates is on record for both the 3<sup>rd</sup> and 4<sup>th</sup> Respondents respectively.

### **B. The Dispute Background**

7. On 30<sup>th</sup> August 2023, the Tenant moved this Honourable Tribunal vide a Reference and Application seeking to challenge the Landlord’s notice of termination dated 25<sup>th</sup> July 2023. The Tenant sought to be allowed access into the suit premises and removal of barriers mounted at the entrance. The said application gave rise to BPRT E850/2023.
8. Thereafter, the matter was certified as urgent and orders were issued restraining the Landlord and/or its employees from evicting the Tenant and interfering with its quiet occupation. The Tribunal further ordered that the barriers at the entrance be removed and Tenant be allowed access into and out of the suit premises. The matter was later scheduled for hearing on 16<sup>th</sup> November 2023.
9. However, on 1<sup>st</sup> December 2023, the Landlord file a Preliminary objection alleging that this Tribunal lacks jurisdiction. Further, the Landlord averred that 1<sup>st</sup> Respondent, East Coast Horizons Limited, lacked proper standing to sue and further denied any tenancy relationship as ever been in existence.
10. On 21<sup>st</sup> September 2023, Geotech Limited (“Geotech”) filed a Reference and Application seeking to challenge the Landlord’s termination notice dated 25<sup>th</sup> July 2023 which culminated to BPRT E926/2023. The Applicant, Geotech, sought orders restraining the Landlord from evicting the Applicant and it be allowed access into the suit premises. The Tribunal ordered the application be served and matter be heard for inter-partes hearing.
11. On 14<sup>th</sup> November 2023, the Landlord through their advocates notified the Tribunal that BPRT E850/2023 was still pending for determination and sought to consolidate the matters on the ground that they both relate to the same parties and same suit premises as the subject matter.
12. The Tribunal allowed the prayer to consolidate BPRT E850/2023 and BPRT E926/2023. The matter was schedule for mention. However, on 1<sup>st</sup> December 2023, the Landlord file a Preliminary objection alleging that this Tribunal is stripped off jurisdiction.



13. On 11<sup>th</sup> October 2023, the Sub-tenants filed a Reference and Application both evenly dated requiring matter be certified as urgent, orders issued restraining the Respondents from evicting them and access to the suit premises. The application resulted into BPRT E997/2023.
14. The Tribunal having considered the Sub-tenants' Application issued Orders dated 18<sup>th</sup> October 2023 allowing the Sub-tenants access into the suit premises without any hindrances pending inter-partes hearing.
15. Following a hearing on 7<sup>th</sup> November 2023, the Court further ordered the Sub-tenants to deposit rent for October and November 2023 with the Tribunal pending a mention on 24<sup>th</sup> November 2023 to confirm compliance. However, on 24<sup>th</sup> November 2023 when the matter came up for mention to confirm compliance, the Sub-tenants had not complied and the Tribunal ordered the matter be transferred for hearing and disposal together with BPRT E850/2023 and BPRT E926/2023.
16. On 14<sup>th</sup> December 2023, the Tribunal ordered the Sub-tenants/Applicants to pay rent for November, December and January failure to which the Landlord had authority to evict and distress for rent.
17. On 26<sup>th</sup> January 2024, during the hearing, the Tribunal was notified by the 8<sup>th</sup> Applicant, Kassam Mohammed, that the Sub-tenants had vacated the suit premises. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents also notified the Tribunal that they had vacated. Therefore, this matter was set for ruling on transitional period arrears.
18. It is on this basis that the matter is coming up for ruling.

#### **C. Sub-tenant's Case**

19. The Sub-tenants aver that they have been paying rent since they took possession of the suit premises for purposes of their business activities.
20. The Sub-tenants also allege that they have not refuted paying rent. However, they are in utter confusion as to whom should be the proper beneficiary as Landlord.

#### **D. Tenant's Case**

21. On the other hand, the 2<sup>nd</sup> Respondent as the Director of the Tenant states that the Sub-tenants are in default as they have failed to pay rent for the month of October 2023 to the Tenant for subletting the suit premises to them.
22. The Tenant seeks the Sub-tenants to be ordered to pay all outstanding arrears duly owed failure to which the Tribunal be pleased to allow the Tenant levy distress.

#### **E. Landlord's Case**

23. The 4<sup>th</sup> Respondent as the Director Shareholder of the Landlord alleges that the Sub-tenants have not complied with the orders requiring them to pay rent for November, December 2023 and January 2024.
24. The Landlord seeks permission from the Tribunal to be allowed to levy distress for rent from the Sub-tenants.

#### **F. Issues for Determination**

25. After careful considerations, the Tribunal takes notice that both the Tenant and the Sub-tenants have moved out of the suit premises which is in compliance with the orders issued and therefore the Tribunal is devoid of jurisdiction to make a finding on most issues.



26. Therefore, in my respectful view, I find that the sole issue I can make a finding on is Whether there is any rent duly owed for payment?

### **G. Analysis and Findings**

27. Section 3 (3) of the [CAP 301](#) Laws of Kenya provides:

“(3) The landlord of a controlled tenancy shall keep a rent book in the prescribed form, of which he shall provide a copy for the tenant and in which shall be maintained a record, authenticated in the prescribed manner, of the particulars of the parties to the tenancy and the premises comprised therein, and the details of all payments of rent and of all repairs carried out to the premises.”

28. The 4<sup>th</sup> Respondent on behalf of the Landlord claims that failure by the Sub-tenants to comply with the orders of this Honourable Tribunal, the Sub-tenants have accrued rent arrears for November, December, 2023 and January 2024. However, the Landlord has not filed any statements of accounts including a rent book as proof of such rent arrears duly owed.
29. In the same vein, the Tenant alleges that the Sub-tenants are in default of rent arrears for October 2023. However, nothing has been placed before this Honourable Tribunal to buttress this claim.
30. In light of the above, this Tribunal is not in a position to determine the true assertions from both the Landlord and the Tenant claiming rent arrears duly owed without further evidence.
31. In any event it appears the sub tenants were blocked and left and could no longer pay rent for premises they did not have as they were on month to month tenancies the head Tenant had a contractual obligation to the Landlord which he met and a refund is not recoverable from either the subtenants or the Landlord that said I find as follows;

### **H. Orders**

32. In the upshot, the following orders shall abide:
- a. That the reference and application stand dismissed and
  - b. Each party to bear their own costs.

**HON. A MUMA - AG. CHAIR/MEMBER**

**HON JACKSON ROP - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Ruling dated, delivered and signed at Nairobi on this 14<sup>th</sup> day of March 2024 in absence of the landlord and subtenants in the presence of Joseph Kamau 2<sup>nd</sup> Respondent Head Tenant.

**HON. A MUMA AG. - CHAIR/MEMBER**

**HON JACKSON ROP - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

