



**Maina v Maina t/a Prophetic Christian Church (Tribunal Case
E289 of 2023) [2023] KEBPRT 704 (KLR) (Civ) (1 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 704 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E289 OF 2023
GAKUHI CHEGE, MEMBER
DECEMBER 1, 2023**

BETWEEN

JANE WAIRIMU MAINA LANDLADY

AND

BERNARD MAINA T/A PROPHETIC CHRISTIAN CHURCH TENANT

RULING

1. On August 15, 2023, this Tribunal delivered a ruling in respect of the Landlord's application dated March 16, 2023 together with the tenant's preliminary objection dated 26th April 2023 pursuant to directions given on May 11, 2023 wherein both were to be canvassed together.
2. By the said ruling, the landlord's application of 16th March 2023 was allowed in terms of prayers 2,3,4 and 5 thereof and the tenant's preliminary objection dated 26th April 2023 was dismissed for lack of merit. The landlord was awarded costs of Kshs.25,000/- against the tenant.
3. On 15th August 2023, the tenant filed a fresh application seeking for setting aside of the ruling dated 10th August 2023 together with consequential orders entered thereon and for reinstatement of the suit. He further seeks that the court proceeds to hear and determine the preliminary objection together with the application dated 16th March 2023.
4. The application is supported by the tenant's affidavit of 15th August 2023 and the grounds on the face thereof to wit:-
 - a. That the landlady herein acting in her own capacity filed an application dated 16th March 2023 under certificate of urgency seeking inter alia that the tenant be ordered to give vacant possession of the business premises located at Plot No. 56 Block G, Phase 2, Dandora immediately and in default, the OCS, Dandora Police Station to enforce eviction.



- b. That the landlady did not have locus standi to institute the suit or to seek eviction of the tenant as the landlord with whom he entered into a tenancy agreement was deceased.
 - c. The tenant filed a preliminary objection dated 26th April 2023 that the landlady had no letters of administration and there was no landlord – tenant relationship between parties herein.
 - d. That the honourable court erred in law and fact by determining an application at a preliminary stage without determining the preliminary objection on record and without hearing the application.
 - e. That the court allowed the prayers in the landlord's application without the matter going for hearing nor directing the tenant to put in submissions to the same which is against his constitutional right to fair hearing.
 - f. That unless the orders sought are granted, the tenant will have been condemned unheard against his constitutional rights.
 - g. That the miscarriage of justice herein unless cured will occasion serious loss to the tenant.
 - h. That the tenant has a good defence to the landlady's claim which raises triable issues.
 - i. That it is in the interest of justice to grant the orders sought to allow the tenant an opportunity to defend the application dated 16th March 2023.
5. The Landlady filed a replying affidavit on September 7, 2023 in opposition to the application dated August 15, 2023 stating that it was a non- starter, malicious, vexatious, frivolous, scandalous and an epitome of abuse of court process.
 6. According to the Respondent, the said application is seeking to challenge the legality of the ruling of August 10, 2023 and that this court is functus officio having delivered its ruling and cannot purport to entertain any further proceedings in this matter. she therefore prays that the application be dismissed.
 7. The application was directed to be canvassed by way of written submissions and both parties complied.
 8. I am required to determine the following issues:-
 - a. Whether this court is functus officio or not.
 - b. Whether the tenant is entitled to the reliefs sought in the application dated August 15, 2023.
 - c. Who is liable to pay costs?.
 9. As observed at paragraph 1 of this ruling, the application dated March 16, 2023 together with the tenant's preliminary objection dated April 26, 2023 were directed to be canvassed together. As such, the ruling of August 15, 2023 was in respect of both.
 10. The landlady in opposition to the current application has stated that this Tribunal is functus officio having rendered its ruling in the matter and as such it is not entitled to entertain further proceedings on the already determined issues. This contention raises a question of jurisdiction which ought to be determined as a preliminary issue.



11. In the case of *Telkom Kenya Limited – vs- John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya Limited)* 2014) eKLR at page 7/11 the Court of Appeal stated as follows:-

“The Supreme Court in *Raila Odinga – vs- IEBC* cited with approval an excerpt from an Article by Daniel Malan Pretorius entitled “The origins of the fuctus officio Doctrine, with special Reference to its application in Administrative law (2005) 122 SALJ 833 in which the learned author stated,

“The fuctus officio doctrine is one of the mechanism by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter....The (principle) is that once such a decision has been given, it is (subject to any right of appeal to superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker”.

(see also the court of appeal decision in *George Nyakundi Ombaba – vs- Attorney General* (2017) eKLR.

12. All the issues raised in the tenant’s application were determined in this Tribunal’s ruling of 15th August 2023 and as such, the Tribunal is functus officio in line with the foregoing Superior Court’s decisions. The Tribunal cannot sit on appeal against its own decision.
13. In the premises, the tenant’s application dated 15th August 2023 is incompetent, bad in law and an abuse of court process and is hereby dismissed with costs to the landlady/Respondent assessed at Kshs.15,000/-.

It is so ordered.

RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 1ST DAY OF DECEMBER 2023.

HON. GAKUHI CHEGE

FOR: CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of

Landlady present in person

Ougo for the Tenant

