



**Macharia v Kioi (Tribunal Case E006 of 2024)
[2024] KEBPRT 1218 (KLR) (30 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1218 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E006 OF 2024
A MUMA, MEMBER
AUGUST 30, 2024**

BETWEEN

JOHN KINGORI ANDREW MACHARIA LANDLORD

AND

PETER MUNURIA KIOI TENANT

RULING

A. Parties And Their Representatives

1. The Applicant, John Kingori Andre Macharia, is the lawful owner of the suit premises erected on Plot No. Aguthi/Gatitu 2070 situate within Nyeri County in the Republic of Kenya.
2. The Firm of Maina Kimumu & Company Advocates represents the Landlord in this matter.
3. The Respondent, Peter Munuria Kioi, rented the suit premises and hence is a lawful tenant thereto.
4. The Firm of Karweru & Company Advocates represents the Tenant in this matter.

B. Dispute Background

5. On 6th October 2024, Landlord served the Tenant with a notice to terminate tenancy dated 4th October 2024 on the basis that the Tenant was in rent arrears amounting to KShs. 68,000.00. However, the Tenant did not object to the said notice and failed to vacate the suit premises on the effective date of the notice, 1st January 2024.
6. Consequently, the Landlord moved this Tribunal vide a Reference and Notice of Motion dated 10th January 2024 seeking Orders certifying the matter as urgent, terminating the tenancy between him and the Tenant and consequently issue an eviction order against the Tenant, and break in orders should the Tenant restrain the Landlord from accessing the suit premises. Further, the Landlord prayed that the OCS Ruring'u Police Station to enforce the Orders of this Tribunal in this matter.



7. The Tribunal through an Order dated 11th January 2024 certified the matter as urgent and set the matter for hearing on 8th February 2024 and further directed the Landlord to file an Affidavit of Service as proof of service, which the Landlord did on 9th January 2024.
8. On 8th February 2024, this Court allowed the Landlord's Application dated 10th January 2024 terminating the Tenancy between Landlord and the Tenant herein in the absence of the Tenant and marked the matter as settled.
9. The Tenant subsequently filed an Application under a Certificate of Urgency dated 27th February 2024 seeking to have the Orders of this Court dated 8th February 2024 terminating the Tenancy between him and the Landlord and any other consequential orders thereto stayed, set aside or vacated.
10. It is the Tenant's Application dated 27th February 2024 that is the subject of this Ruling.

C. The Tenant's Case

11. The Tenant's Application is based on the grounds that he was not served with the notice of termination as alleged by the Landlord and hence, the said notice is ineffective.
12. Further, the Tenant in his submissions dated 12th July 2024, submits that he was not served with the Application dated 10th January 2024 and that the Orders of 8th February 2024 were issued in his absentia thereby denying him an opportunity to participate in the proceedings.
13. The Tenant therefore prays that this Court stays, sets aside and vacates its Orders dated 8th February 2024 and direct the Landlord to allow his access to the suit premises.

D. The Respondents' Case

14. In his replying affidavit dated 15th May 2024, the Landlord avers that the Tenant was duly served with both the notice to terminate the Tenancy dated 4th October 2023 and the Reference and Application dated 10th January 2024, but deliberately failed to respond to the said notice of termination and to enter appearance to defend the matter.
15. The Tenant avers that following the Orders of this Court dated 8th February 2024, the Tenant vacated the premises on his own volition and took all his items through his authorized agents.
16. It is the Landlord's case therefore that this Tribunal lacks the requisite jurisdiction to hear and determine the matter since the tenancy has already determined and the suit premises let to another person currently running a fish eatery business.

E. Issues For Determination

17. I have given full consideration to the Tenant's Notice of Motion Application dated 27th February 2024 and Respondents' Replying Affidavit dated 15th May 2024. It is my considered opinion that the sole issue that falls for determination is:

Whether this Tribunal should stay, review and/or suspend the enforcement and/or execution of the Orders issued delivered on 8th February 2024 and all consequential processes arising therefrom.



F. Analysis And Determination

18. Pursuant to Section 12 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Cap 301 Laws of Kenya, this Court is clothed with the requisite jurisdiction to entertain an Application to stay, set aside or vacate its own Orders. It states;

A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power—

- i. to vary or rescind any order made by the Tribunal under the provisions of this Act;
19. The power to review is also provided for under Section 80 of the [Civil Procedure Act](#) Cap 21 which provides that: -

“Any person who considers himself aggrieved—

- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”
20. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides for the threshold to be met in an application for review. It provides that: -

“1.

(1) Any person considering himself aggrieved—

- a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”
21. In elaborating Section 80 of the [Civil Procedure Act](#) Cap 21 and Order 45 Rule 1 of the Civil Procedure Rules, 2010 the Court in *Republic v Public Procurement*



Administrative Review Board & 2 others [2018] eKLR held that: -

“Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”

22. Similarly, in *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR High Court of Kenya Nairobi Judicial Review Division Misc. Application No. 317 of 2018* Mativo J culled out the following principles from a number of authorities including: -

i.

ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.

23. I am well aware that the power to review is discretionary. I am guided by the decision of the Court of Appeal in *Pancras T. Swai v Kenya Breweries Limited [2014] eKLR* where the Court held: -

“Order 44 rule 1 (now Order 45 rule 1 in the 2010 Civil Procedure Rules) gave the trial Court discretionary power to allow review on the three limbs therein stated or “for any sufficient reason...”

24. I have considered all materials placed before this Court and note that in deed, the Orders of the Court dated 8th February 2024 were issued in the absence of the Tenant. However, I note that the Landlord filed a return of service being proof that service was effected on the Tenant.

25. Further, I note that despite the Landlord indicates that the Tenant vacated and he has already let the suit premises to someone else, thereby terminating the tenancy between the parties herein. This, the Tenant has not denied. In the circumstances, this Tribunal lacks the requisite jurisdiction to hear and determine this matter.

G. Determination

26. In the upshot, the Tenant’s Application and reference dated 27th February 2024 is hereby dismissed. Each party to bear their own costs.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 30TH DAY OF AUGUST 2024 IN THE PRESENCE OF WANJILA HOLDING BRIEF FOR MURITI FOR THE TENANT AND NO APPEARANCE FOR THE LANDLORD

HON. A MUMA

MEMBER



BUSINESS PREMISES RENT TRIBUNAL

