



**King’oina v Kumenda; Kingoina (Interested Party) (Tribunal Case
82 of 2019) [2023] KEBPRT 75 (KLR) (Civ) (2 March 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 75 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE 82 OF 2019
A MUMA, VICE CHAIR
MARCH 2, 2023**

BETWEEN

GRACE MAKORI KING’OINA APPLICANT

AND

JASON NYACHAE KUMENDA RESPONDENT

AND

JOHNSON NYAKUNDI KINGOINA INTERESTED PARTY

RULING

Parties And Their Representative

1. The applicant Grace Makori King’oina is the alleged landlord of the suit property Kisii Municipality/ Block III/85 (hereinafter referred to as the “landlord”)
2. The firm of Mose Nyambega & Co Advocates represents the landlord in this matter.
3. The respondent Jason Nyachae (hereinafter referred to as the “tenant”) leased the demised premises from the landlord.
4. The firm of S.M Sagwe & Company Advocates represent the tenant in this matter.
5. Johnson Nyakundi Kingoina appeared in person.

The Dispute Background

6. The landlord has moved this tribunal *vide* a reference dated September 17, 2019 seeking to be granted vacant possession of the premises after issuing the tenant with a notice to terminate tenancy.



7. The tenant filed an application at the magistrate's court seeking to restrain the landlord from interfering with their possession of the premises to which the landlord filed a preliminary objection and stated that there was an ongoing suit at the tribunal, the present suit herein.
8. After a lot of back and forth this matter was set down for physical hearing at BPRT offices in Nairobi View park towers and in the course of the hearing what became clear is that this property is the property of the late Kingoina husband to Grace who was the second wife and father to Johnson who is the son of the first wife herein Rebecca Kingoina, there are several other dependants some of whom from the second wife accompanied their mother to the hearing.
9. At the hearing it was evident the family since the death of Rebecca the first wife is now embroiled in a fresh succession dispute over the property pitting the Son against his step mother sisters and brothers on the sole reason that they Rebecca and Johnson were listed as the administrators of the estate of Kingoina in the grant which enabled them to acquire a title of the property in their joint names and Rebecca having deceased the property remained in the sole name of Johnson.
10. The tenant was initially paying rent to Grace but has since changed to pay rent to Johnson which necessitated the said suit when Grace issued a notice for rent arrears and eviction. I ordered rent to be deposited with the tribunal and added Johnson as an interested party.
11. Having looked at all the documents filed and heard all parties my mind has been drawn particularly to High Court civil case No 29 of 1995 over the same subject property in Kisii which was filed particularly to place a caution and prevent Rebecca now deceased and son Johnson from charging, transferring, or parting with possession of the subject property and that all rents to be deposited in court. The ruling of Justice Mbaluto as he then was dated May 3, 1995 granted all the prayers sought and ordered the same to remain in force until the problems relating to the administration of the estate of the late Kingoina are sorted out by family or court. There seemed to have been a family meeting which settled the matter out of court and from the records I have I see no consent recorded or estate matter filed.

List Of Issues For Determination

12. The issue before this honourable tribunal is;
 - a. Whether there exists a tenancy relationship between the landlord and the tenant and/or the interested party and the tenant.

Analysis And Findings

13. The present suit before the tribunal was instituted by the landlord as a result of lack of compliance with a notice to terminate tenancy dated June 28, 2019 issued to the tenant that was to take effect on September 1, 2019.
14. The landlord issued the notice on the grounds that the tenant was undertaking some renovations in the premises for which she had not approved.
15. In presenting their case, several other issues have arisen before this tribunal that need to be dealt with prior to addressing the validity of the said notice.
16. The tenant in response filed an application at the Chief Magistrates Court at Kisii seeking orders to restrain the landlord herein from interfering with their possession of the premises on the grounds that she did not have any proprietary rights to the property.



17. The landlord in responding to the application at the magistrate's court stated that the suit property belonged to her late husband King'oina Kenyuri. Upon his demise, his first wife, Rebecca Kingoina and her son filed for grant of letters of administration where they excluded all the other beneficiaries.
18. The tribunal takes note of the fact that the landlord had instituted a claim against the aforementioned administrators of the estate in civil suit No 29 of 1995 where she sought orders for the administrators to be restrained from charging, transferring or parting with the possession of any of the properties registered in the name of her late husband King'oina Kenyuri.
19. In determining the matter, Hon Mbaluto stated that in responding to the application the tenant did not address the averments by the landlord that in acquiring the grant of letters of administration they did not involve her as a rightful beneficiary.
20. Additionally, the judge found it suspicious that the administrators decided to make the application for the grant in Nairobi which is miles away from where the properties are situated. As such he also doubted the fairness in which the property was distributed.
21. There was sufficient proof that the landlord was a rightful beneficiary and hence should have been involved in the distribution of the estate. Based on this the judge granted the orders sought by the landlord.
22. I wish to rely on the above sentiments by the judge and put to question the validity of the process in which the grant of letters of administration were acquired by the current administrator. The exclusion of the landlord was prejudicial and additionally, I also fail to understand why the parties did not institute the matter in Kisii which was the rightful forum. As such I am reluctant to make my determination based on the produced letters of administration.
23. Additionally, I take note that after the landlord instituted the matter challenging the letters of administration, the family decided to amicably resolve the matter and it was agreed that the proceeds for the suit property among other properties should go to the landlord herein.
24. As a result, the tenant herein and the tenants of the other premises proceeded to pay rent and the landlord has annexed evidence in form of receipts showing that she has been receiving rent.
25. This tribunal acknowledges the fact that the suit property is registered in the name of Rebecca King'oina and Johnson Nyakundi. However I cannot turn a blind eye to the fact that the tenant had been paying rent to the landlord. This was until the situation changed and he started paying the aforementioned Johnson Nyakundi under unexplained circumstances.
26. I find that there is a valid tenancy relationship between the landlord Grace Kingoina and the tenant

Orders

- a. The upshot is that the landlords reference dated September 17, 2019 is hereby upheld in the following terms;
- b. The landlords notice shall take effect immediately and tenant is to give vacant possession on or before the March 15, 2023 in default landlord can break in and take over vacant possession with the assistance of OCS Kisii Police station ensuring peace prevails.
- c. In the alternative the tenant at liberty to negotiate new lease terms with the landlords if they so wish.
- d. Any rent deposited to the tribunal be released to the landlord Grace Kingoina.
- e. The landlord shall have costs assessed at Kshs 50,000.00



RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 2ND DAY OF MARCH 2023 IN THE ABSENCE OF THE TENANT AND IN THE PRESENCE OF KIAGA H/B FOR NYAMBEGE FOR THE LANDLORD.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

