



Masheti v Kepha Kevin Nyongesa t/a Ukunda Hill Academy (Tribunal Case E097 of 2021) [2023] KEBPRT 1175 (KLR) (1 December 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1175 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E097 OF 2021
CN MUGAMBI, CHAIR
DECEMBER 1, 2023**

BETWEEN

BAKARI HAMISI MASHETI APPLICANT

AND

KEPHA KEVIN NYONGESA T/A UKUNDA HILL ACADEMY .. RESPONDENT

RULING

Introduction

1. The landlord's notice of motion dated 17.11.2021 seeks an order that the tenant be ordered to vacate the suit premises. The Applicant has based the application on the grounds that the tenant has not paid rent amounting to Kshs. 2,520,000/= since 2014 when he acquired the premises known as Kwale/ Diani Beach Block/642.

The Landlord's depositions

2. The landlord's affidavit in support of his application may be summarized as follows:-
 - a. That in the year 2014, the Applicant and his late wife Sikuku Salama Tambalu-++- entered into a lease agreement with the tenant for a lease term of eight (8) years.
 - b. That the agreed rent was Kshs. 30,000/= per month.
 - c. That the Respondent runs a school known as Ukunda Hill Academy in the suit premises.
 - d. That the parties subsequently entered into a sale agreement for the suit premises on 24.3.2015 but the tenant failed to honour both the agreement and the sale agreement terms.
 - e. That despite demand from the landlord's Counsel, the tenant has failed to pay the outstanding rent arrears as a consequence of which, the tenant now owes the landlord Kshs. 2,520,000/= in rent arrears.



- f. That the landlord intends to rent out the suit premises to another tenant so that he can generate income from the suit premises.

The Tenant's depositions

3. The tenant/Respondent's replying affidavit may be summarized as follows:-
 - a. That the purported lease agreement was never executed by the tenant/Respondent
 - b. That the alleged rent arrears of Kshs. 2,520,000/= is denied in toto.
 - c. That by an agreement dated 24.3.2015, the landlord and his late wife were selling to the Applicant a piece of land located near Diani Beach which was never specified in the agreement.
 - d. That the tenant nonetheless paid to the landlord Kshs. 500,000/= in the belief that it was a genuine sale transaction.
 - e. That upon payment of the above sum, the tenant took possession of the suit premises and established a school, namely; St. Kevin Hill Academy Ukunda.
 - f. That as a result of the occupation by the tenant, he was sued in Msambweni ELC Case No. E003 of 2021 wherein a consent was reached that the Tenant vacates the plots in issue i.e. plot No. 909, 910 and 911 and the Tenant vacated in the year 2016.
 - g. That the tenant runs a school known as St. Kevin Hill Academy and not Ukunda Hill Academy.
 - h. That land parcel No. Kwale/Diani Beach/Block/642 is unknown to the tenant and he has never dealt with it and neither is he in occupation of the said premises.
 - i. That as things now stand, the landlord obtained from the tenant Kshs. 500,000/= fraudulently.

Analysis and determination

4. The only issue I have to determine in this application is whether the landlord is entitled to the orders sought in his application and the ultimate fate of the complaint by the landlord.
5. The basis upon which the landlord/tenant relationship is said to exist in this matter is the lease agreement undated but witnessed on 23.5.2014. Although the Respondent denies executing the lease agreement, on the face of the said agreement, one Kepha Kevin Nyongesa appeared before one J.N. Matara Advocate and executed his part of the lease. The certificate by M/S J.N. Matara Advocate shows that Mr. Kepha Kevin Nyongesa was known to the said Advocate. I am convinced in these circumstances that actually the tenant executed his part of the lease agreement.
6. Sometimes on or about 24.3.2015, the landlord and one Sikukuu Salama Tambalu and the tenant entered into a sale agreement for the sale of that "parcel of land located in Diani Beach Kwale County measuring ¼ acre (100x100 ft) or thereabouts."

It is not clear whether this is the same parcel of land that the landlord calls Kwale/Diani Beach Block/642 as the tenant has categorically denied having anything to do with this land.
7. What is clear however, is that the parties entered into a sale agreement in the year 2015. The tenant paid Kshs. 500,000/= to the landlord. The question that arises is whether the relationship between



the parties continued to be that of a landlord and tenant or a purchaser and vendor sort of a legal relationship.

8. I am of the view that as soon as the tenant entered into a sale agreement for the purchase of the land from the landlord and therein put up a school, any dispute arising between the parties could not be one of unpaid rent but one for the recovery of the land by the tenant or for the payment of the balance of the purchase price. Strictly speaking therefore, there does not exist the relationship of a landlord and tenant between the parties and in line with settled law, the Tribunal therefore has no jurisdiction to hear and determine this dispute.
9. It is my view that the dispute between the parties can only be resolved by the Environment and Land court which is mandated to determine issues of land ownership and related matters.
10. Having found I have no jurisdiction to hear and determine this dispute, the Application and the Complaint filed herein are dismissed for want of jurisdiction.
11. Each party shall bear its own costs.

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

HON. CYPRIAN MUGAMBI -CHAIRPERSON

7.12.2023

Delivered in the absence of the parties

