



**Kamau v Nyaga (Tribunal Case 623 of 2019)
[2023] KEBPRT 1290 (KLR) (6 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1290 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 623 OF 2019
CN MUGAMBI, CHAIR
OCTOBER 6, 2023**

BETWEEN

JOSEPH NDIRITHI KAMAU TENANT

AND

JOAN W. NYAGA LANDLORD

RULING

Introduction

1. The notice of preliminary objection raised by the landlady and dated 9.8.2023 is brought on the following grounds:-
 - a. That having rendered its ruling on the 16.6.2023 the Tribunal is *functus officio* and lacks the jurisdiction to hear and determine the application.
 - b. That in the event the Applicant was aggrieved by the Ruling of the Tribunal, he should have invoked Section 15(1) of Cap 301 within thirty (30) days thereof.
 - c. The *ex parte* orders issued on 18.7.2023 violates the Respondent's constitutional rights under Article 47 of [the Constitution](#) 2010.
 - d. The application places undue restrictions on the Respondent's property rights under Article 40 of [the Constitution](#), 2010.
 - e. The application does not meet the threshold to warrant a review of the Tribunal's ruling dated 16.6.2023.
 - f. The application is frivolous, vexatious and an abuse of the process of the court.
 - g. The application is scandalous and conveys contempt of the court.



- h. The application lacks merit and the same should be dismissed entirely with costs to the Respondent
2. Both parties have filed their respective submissions. I have considered them in determining the landlord's notice of preliminary objection.
3. The landlady's objection mainly revolves around the assertion that the Tribunal has no jurisdiction to hear and determine the tenant's application for the reason that the Tribunal is *functus officio*, having made a determination in this matter on 16.6.2023.
4. The main prayer in the tenant's application dated 14.7.2023 is couched in the following terms:-

“That this Honourable Tribunal be pleased to review, stay, vary and/or set aside the ruling and all consequential orders of the Honourable Tribunal made on the 16th June 2023.”

The issue that arises in the circumstances is whether the Tribunal has powers to entertain an application for review after it has made a final determination in a matter.

Section 12(i) of Cap 301 gives the Tribunal powers to vary or rescind any order made by the Tribunal under the provisions of the Act.

The substantive law on the power to review orders or Judgments is to be found in the [Civil Procedures Act](#) where it is provided under order 45 as follows:-

“45(1) any person considering himself aggrieved by a decree or order from which an appeal is allowed but from which no appeal has been preferred, or 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 this 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.”

5. In view of the clear provisions of Cap 301 and order 45 of the [Civil Procedure Rules](#), I am unable to agree with the submissions of Counsel for the Landlord that the Tribunal does not have powers to hear the tenant's application for review.
6. I have looked at the other grounds raised in the preliminary objection and in my view they do not amount to preliminary objections strictly so called.
7. I in the circumstances find no merits in the landlady's preliminary objection and I hereby dismiss the same.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF OCTOBER, 2023

HON. CYPRIAN MUGAMBI

CHAIRPERSON

6.10.2023

In the presence of;

Miss Mutua holding brief for Mr. Odera for the Applicants

Ms. Bimo for the landlord

