



**Abdalla & 4 others v Umoja Mosque Community Welfare Organization & another
(Tribunal Case 400 of 2021) [2023] KEBPRT 1133 (KLR) (Civ) (24 August 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1133 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE 400 OF 2021
CN MUGAMBI, CHAIR
AUGUST 24, 2023**

BETWEEN

**OMAR YUSUF ABDALLA 1ST TENANT
MOHAMED DIDA 2ND TENANT
SARAH TUNU MOHAMED 3RD TENANT
ERICK JUMA & ELLY OJWANG OMOLO 4TH TENANT
UMOJA YOUNG MUSLIM ASSOCIATION 5TH TENANT**

AND

**UMOJA MOSQUE COMMUNITY WELFARE ORGANIZATION 1ST
LANDLORD
UMOJA MOSQUE & MADRASSA SOCIETY 2ND LANDLORD**

RULING

1. The interested party's application dated 23.2.2023 seeks the following orders;
 - a. Spent
 - b. That the Tribunal be pleased to hear the application on priority and/or consolidate it with the 1st to 5th Tenants/Applicants application dated 9.2.2023 scheduled for hearing on 1.3.2023.
 - c. That the Tribunal be pleased to join the interested party to this suit pending the hearing and determination of this application.
 - d. That a final order be issued joining the interested party as a party to this suit.



- e. That the Law firm of Abdulrahman Saad & Associates Advocates be allowed to come on record for the interested party.
- f. That the Tribunal does determine that the interested party is the landlord of the suit premises.
- g. That the Tribunal be pleased to release the money held in the Tribunal's account to the interested party's bank account at Gulf African Bank A/C No. 082004302 Kenyatta Avenue.

The Interested Party's Depositions

- 2. The Interested party has filed an affidavit sworn by one Mr. Bilali Aida Ismail wherein he has deponed that he is the chairman of the Interested Party.
- 3. The Interested party has deponed that it is aware that on 22.2.2023, the Tribunal issued orders which affected the Interested party and that the Interested party was not able to attend court on the said day and address the court because it had not been joined in the proceedings.
- 4. The Interested party further depones in his affidavit that it be joined to these proceedings so that it is not condemned unheard.

The Landlord's depositions

- 5. The landlord has filed an affidavit sworn by one Mr. Ibrahim James Mkwaya who has deponed that the Interested party has no stake in the suit premises herein and the outcome thereof will not affect the Interested party in any way nor will it be prejudicial to it.
- 6. The landlord depones that the reference filed by the Tenants on 31.8.2021 against the landlord contested the increment of rent.
- 7. It has been deponed that the landlord is a community based organization (CBO) registered with the department of Social Services and manages Umoja Muslim Academy, Umoja Mosque, Madrassa, Health Centre and leases out containers for business rentals.
- 8. The landlord further depones in its affidavit that it has not entered into any collaboration nor is it affiliated to the Umoja Mosque & Madrassa and/or the Supreme Council of Muslims of Kenya (SUPKEM).
- 9. The landlord further depones that it has not received any letter from SUPKEM laying claim to any of the businesses or properties of the landlord CBO.
- 10. The landlord also depones that the Interested party filed a motion dated 9.2.2023 but later withdrew the same.

Analysis and determination

- 11. The only issue that arises for determination is whether the Interested party/Applicant is entitled to the prayers sought in its application.
- 12. The main issues in contention are the joinder of the interested party to these proceedings and the release of the funds held by the Tribunal to the Interested party; and also a determination whether the Interested party is the landlord of the suit premises.



13. Order 1 Rule 3 of the Civil Procedure Rules provides as follows:-

“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or services of acts or transactions is alleged to exist, whether jointly, severally or in the alternative where if separate suits were brought against such persons, any common question of law or fact would arise.”

14. Does there exist any right to relief against the Interested party? The Tenants herein have sued Umoja Mosque Community Welfare Organization as their landlord. It is argued that Umoja Muslim Welfare Organization was the predecessor of the landlord. The lease agreements annexed by the tenants clearly show that the landlord was Umoja Muslim Welfare Organization and not the Interested party.
15. I have perused the affidavit in support of the Interested party's application and I have not seen any connection that the Interested party has with the tenants. The interested party has not explained its relationship to the initial landlord, Umoja Muslim Welfare Organization and further has not demonstrated in what manner it claims to be the landlord of the suit premises. The Interested party has not demonstrated the existence of a landlord tenant relationship between it and the tenants.
16. What clearly emerges from the pleadings is that there is a tussle over who should receive the rent deposited at the Tribunal. That does not translate into a dispute between the tenants and the landlord but rather a dispute between “two landlords.” In the ensuing confusion and a myriad of applications, it is very easy to lose sight of the original reference filed by the tenants, which was a contest on the increment of rent.
17. The only documents the Interested party relies on in support of its application are a certificate from SUPKEM and from the Registrar of Societies. The said documents do not prove any landlord/tenant relationship between the parties nor do they show any connection that the Interested party has to the suit premises.
18. I do not in the circumstances think that the Interested party has demonstrated that it is a necessary party to those proceedings or that there is a relief flowing from the Interested party to the tenants or that the ultimate order or decree cannot be enforced without its presence or that its presence is necessary to enable the court to effectively and completely adjudicate upon and settle all questions involved in this suit (see the case of; Peter Irungu Wainaina vs Chege Njehia & Others [2018] eKLR where the decision in Technomatic Ltd t/a Promopack Company vs Keatn Wines Agencies Ltd & Another [2014] eKLR was quoted with approval).
19. In conclusion, I do not find any merits in the Interested Party's application dated 23.2.2023 and the same is hereby dismissed with costs to the landlord/Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH DAY OF AUGUST 2023

HON. CYPRIAN MUGAMBI - CHAIRPERSON

24.8.2023

