



**Mbevi t/a Kiandu Tyres v Kiriye House Limited (Tribunal Case
298 of 2020) [2024] KEBPRT 1417 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1417 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 298 OF 2020
CN MUGAMBI, CHAIR
SEPTEMBER 30, 2024**

BETWEEN

STEPHEN MUNYWOKI MBEVI T/A KIANDU TYRES TENANT

AND

KIRIYE HOUSE LIMITED LANDLORD

RULING

1. The Landlord's Application dated 16.7.2024 seeks for orders that the Tenant/Applicant's suit be dismissed for want of prosecution and that the Tenant be ordered to bear the costs of the suit.
2. The Landlord/Applicant has filed an Application sworn on 16.7.2024 wherein its Counsel has deponed that this suit was filed on 12.3.2020 and that since the suit was so filed, the Tenant has not taken any steps to prosecute this matter.
3. The Landlord has further deponed that the four years delay in prosecuting this matter is inordinate and prejudicial to the Landlord.
4. The Tenant has filed grounds of opposition in which he has stated that the Application is frivolous as the Tenant's obligation under the law is only the filing of the Reference. The Tenant has further stated that it is the obligation of the Landlord to prosecute the Reference and prove the notice under Section 9 of the Act, Cap 301.
5. From a perusal of the court record, this matter came to court on 12.3.2020 when it was fixed for hearing on 26.5.2020. nothing seems to have happened on 26.5.2020. On 30.7.2024 the instant Application was filed. It is therefore true that since this matter was filed, the parties took no action to prosecute the same; until the Landlord applied for its dismissal approximately four years after it was filed.
6. This matter originates from a notice to terminate tenancy dated 21.2.2020- issued to the Tenant by the Landlord. The Tenant's argument is that it was the duty of the Landlord to prosecute the Reference



once the Tenant had filed the same. With respect, I do not agree with this position. The notice to terminate tenancy in this case already expresses its effective date and barring any successful challenge, the notice would self-prosecute itself once the effective date is past. The law places the duty to file a Reference in opposition to a notice to terminate tenancy upon the Tenant. In this regard, it is the Tenant who is supposed to push for the prosecution of his Reference as indeed what is to be heard is the Reference so filed.

Section 6(1) of Cap 301 in this respect provides as follows:-

“A receiving party who wishes to oppose a tenancy notice and who has notified the requesting party under Section 4(5) of this Act that he does not agree to comply with the tenancy notice, may before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until and subject to the determination of the Reference by the Tribunal.”

7. It is the Tenant who filed the Reference. Since the same was filed the Tenant has not shown any interest in having the same determined. It is now over four years since the Reference was filed and I do agree with the Landlord that the delay is inordinate and prejudicial to the Landlord.
8. In the circumstances, the Reference by the Tenant dated 10.3.2020 is hereby dismissed with costs to the Landlord.

CONCLUSIONS

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF SEPTEMBER, 2024.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Kinyua for the Tenant and Ms. Gakii for the Landlord

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