



**Kamau v Hash Activated Limited & 2 others (Tribunal Case E939 of 2022)
[2023] KEBPRT 44 (KLR) (Civ) (30 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 44 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E939 OF 2022
A MUMA, VICE CHAIR
JANUARY 30, 2023**

BETWEEN

GRACE NJERI KAMAU TENANT

AND

HASH ACTIVATED LIMITED 1ST RESPONDENT

JAMES DAVIDS MWANGI 2ND RESPONDENT

MARY WANJIRU MUHURA 3RD RESPONDENT

RULING

A. Parties And Their Representatives

1. The tenant/applicant Grace Njeri Kamau rented a shop space on the property situated on Land Title No. Kiambaa/ruaka/2554.
2. The 1st respondent Hash Activated Limited is a company whose directors are the 2nd and 3rd respondent and the landlord.
3. The 2nd respondent is a director of Hash Activate Limited, the 1st Respondent.
4. The 3rd respondent is a director of Hash Activate Limited and the landlady.
5. The Firm of Wambu Law Advocates represents the 3rd respondent.

B. The Background Of The Dispute

6. The 1st respondent/Landlord and the tenant entered into a tenancy agreement for a term of 3 years commencing on the 20th day of September, 2022.



7. The tenant vide a reference and a notice of motion application dated October 18, 2022 sought a plethora of orders against the respondents. She prayed that the respondents be compelled to re-open the suit premises, reconnect electricity and water supply into the suit premises, and allow the tenant to continue with her business without interruption pending the hearing and determination of the suit.
8. Accordingly, this Honourable Tribunal allowed the application and granted the tenant prayers number 2, 3, 4, and, 5 of the application vide its ruling delivered on October 19, 2022. Further, the tenant was ordered to pay rent due for November on the due date and subsequently thereafter for every month on the 5th, and to serve the Respondents for hearing on December 2, 2022.
9. Subsequently, vide a notice of motion dated October 21, 2022, the tenant sought further intervention by this Honourable Tribunal. She sought to have the orders issued by the Tribunal on October 19, 2022 extended pending the hearing and determination of the suit, that the 3rd respondent be compelled to compensate her for the loss and damage occasioned by the closure of her business and be restrained from issuing illegal threats of eviction.
10. This application has been vehemently opposed by the 3rd respondent vide a replying affidavit and a notice of preliminary objection, both dated November 28, 2022, and written submissions dated December 31, 2022.
11. It is the applicants case that she is a tenant and therefore has a right to protection of this Honorable Tribunal, pursuant to a lease agreement dated September 20, 2022.
12. That the Landlady locked the suit premises and disconnected water and electricity supply from the suit premises and has continually threatened her with eviction despite her rent being fully paid.
13. The landlady in her replying affidavit dated November 28, 2022 at paragraph 25 states that there is no tenant landlord relationship between her and the tenant as the lease agreement passed off to this Honorable Tribunal is a forgery.
14. Further, the Landlady states that the lease agreement was not prepared and executed by her company, and that her company's advocates who the claimant claims to have drawn the agreement have lodged a complaint with the DCI who are currently investigating the applicant for forgery and uttering a false document.

C. Issue For Determination

15. I have carefully considered the applicant's Applications, the 3rd respondents replying affidavit and written submissions, and the law. I find that the issue for determination is whether there is a tenancy relationship between the applicant and the 3rd respondent.

Whether there is a tenancy relationship between the applicant and the 3rd respondent?
16. Section 2 of the *Landlord and Tenant (Shops, Hotels and Catering Establishment) Act* cap 301, provides for instances where a controlled tenancy arises which includes a tenancy which has not been reduce into writing.
17. The relationship between the tenant and the landlord is not a controlled tenancy as the lease agreement is indeed a forgery as evidenced by the OB No. marked "MWM 7" and a letter to the tenant marked "MWM 6". Additionally, the proof of payment of rent cannot be relied upon by this Honorable Tribunal as parts of it have been deleted to conceal the recipient of the said amount.



18. The only payment made by the tenant was in pursuant to an agreement made between the tenant and the landlady in the presence of the OCS Rweno police station in compliance with the Orders issued by this Tribunal on September 19, 2022.
19. This Tribunal therefore does not have jurisdiction to here and determine this matter. It must therefore down its tools as there is no basis for the continuation of these proceedings as was held by Nyarangi JA. in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR.
20. Additionally, the applications fall short of the doctrine of *res-judicata* under section 6 of the [Civil Procedure Act](#) as there is a suit on the same subject matter pending determination and/or finalized already before the Principal Magistrate's Court at Kiambu in Civil Case No. E349 of 2022 as per order dated 13 October 2022 produced and shown to the tribunal infact a week after this determination the Tenant choose to move the tribunal instead of seeking review and or appeal on the said orders. A clear case of forum shopping and has indeed enjoyed the said interim orders to date.

D. Order

21. For the reasons given above I order as follows;
 - a. The upshot is that the Tenants Reference and Applications dated October 18, 2022 and October 21, 2022 are hereby dismissed for want of jurisdiction.
 - b. The 3rd respondents PO dated 28/11/2022 is upheld and orders of this tribunal of October 19, 2022 are vacated.
 - c. The 2nd respondent shall have cost assessed at 20,000/-

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Judgment dated, signed and delivered virtually by Hon A. Muma this 30th Day of January 2023 in the presence of Wambu for 3rd Defendant and in the absence of the Tenant.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

