



**Wangai & 6 others v Julius Kariuki Wangai t/a Central Farmers Co-operative  
(Tribunal Case 142 of 2019) [2023] KEBPRT 1174 (KLR) (18 August 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1174 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE 142 OF 2019  
CN MUGAMBI, CHAIR  
AUGUST 18, 2023**

**BETWEEN**

**JULIUS KARIUKI WANGAI & SIX OTHERS ..... TENANT**

**AND**

**JULIUS KARIUKI WANGAI T/A CENTRAL FARMERS CO-  
OPERATIVE ..... LANDLORD**

**RULING**

1. The landlord's notice of motion dated 8.3.2021 seeks orders that the court be pleased to review, vary and/or set aside its orders made on 8.2.2021.
2. The landlord has deponed in his affidavit in support of the motion, that on 23.10.2019, he was granted orders to evict the Respondents from the suit premises.
3. The Applicant has also deponed that the Respondents moved the court to set aside the orders of eviction issued on 23.10.2019 but the Respondents never served the said motion and the hearing date thereof to the landlord/Applicant. Consequently, the Applicant did not file a response and the motion proceeded without him.
4. The landlord/Applicant therefore urges the court to grant him the right to be heard by setting aside the orders of 23.10.2019.
5. I do note that the application is not opposed. In order to arrive at an order or orders that may move this matter forward in the interest of all concerned, I will need to summarize the proceedings in the file as follows:-
  - a. By his motion dated 22.10.2019, the Applicant sought the eviction of the Respondent from the suit premises on the grounds that the tenants had been served with a notice to terminate tenancy and the said notice had not been opposed by the tenants who failed to file any



reference(s). Prayer (1) and (4) of that motion was allowed ex-parte on 23.10.2019. For clarity purposes, prayer (4) which was granted was in the following terms:-

“That the Honourable Tribunal be pleased to grant order to the Applicant/landlord to evict the Respondents at the premises known as Nyandarui-Olkalou Central for failure to file reference on the notices dated 18<sup>th</sup> April 2019 and which became effective on 1<sup>st</sup> July 2019.”

- b. By their application dated 11.11.2020, the tenants sought to set aside the orders made by the Tribunal on 23.10.2019. on 7.1.2020, the Tribunal made the following orders:-
- i. That the application dated 11.11.2020 is allowed.
  - ii. The Tribunal’s orders of injunction issued on 23.10.2019 are set aside and vacated.
  - iii. The landlord will meet the costs assessed at Kshs. 5,000/=.
6. The landlord now complain that the application dated 11.11.2020 was not served upon him. But is this so?

From the record, on 1.12.2020, the Tribunal made the following orders:

“I have read the application dated 11.11.2020. The same is certified urgent. To be served upon the Respondent for hearing inter partes on 16.12.2020.”

On 16.12.2020, the record of the Tribunal shows that one Mr. Anthony Kori appeared holding brief for Mr. Githui for the landlord and Ms. Eunice Mbaru held brief for Maina Ngaruiya presumably for the tenants. The record further shows that in the presence of the said Counsel, the matter was fixed for mention on 7.01.2021. On 7.01.2021, Ms. Eunice Mbaru appeared for the tenants and informed the court that no notice of appointment and any responses had been filed. She prayed that the application be granted as prayed. It is after this prayer by the Counsel for the tenants that the application dated 11.11.2020 was allowed.

7. It is clear from the foregoing that the Applicant was fully aware of and had been served with the application dated 11.11.2020. This is explained by the fact that the landlord/Applicant was represented by Counsel when the matter came up for hearing for the second time on 16.12.2020, Mr. Anthony Kori to be precise represented the landlord while he held brief for Mr. Githui.
8. Having found that the Applicant was duly served and participated in the proceedings through Counsel, I am unable to exercise any discretion in favour of the landlord/Applicant, the application dated 8.3.2021 is hereby dismissed with no orders as to costs.
9. This is an old matter, I strongly advise that in view of this ruling, that the application dated 22.10.2019 be fixed for hearing on a priority basis.

**RULING DATED, SIGNED AND DELIVERED THIS 18<sup>TH</sup> DAY OF AUGUST 2023.**

**HON. CYPRIAN MUGAMBI - CHAIRPERSON**

**08.2023**

Delivered in the absence of the parties

Court: matter be mentioned on 4.9.2023. Registry to inform parties.

**HON. CYPRIAN MUGAMBI - CHAIRPERSON**



08.2023

