



Maktar & another v Mungai (Sued as administrator in the Estate of Mary Muthoni Mungai & Stephen Mungai) & 2 others; Kariuki (Enjoined as administrator in the Estate of Stephen Mungai Kamau) & 4 others (Interested Parties) (Tribunal Case E406 of 2024) [2024] KEBPRT 999 (KLR) (21 June 2024) (Ruling)

Neutral citation: [2024] KEBPRT 999 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E406 OF 2024
CN MUGAMBI, CHAIR
JUNE 21, 2024**

BETWEEN

HUSSEIN MOHAMED MAKTAR 1ST TENANT

ABDIKADIR MAALIM ABDULLAHI 2ND TENANT

AND

ELIZABETH NJOKI MUNGAI (SUED AS ADMINISTRATOR IN THE ESTATE OF MARY MUTHONI MUNGAI & STEPHEN MUNGAI) 1ST LANDLORD

CHARLES MAINA MUNGAI (SUED AS ADMINISTRATOR IN THE ESTATE OF MARY MUTHONI MUNGAI) 2ND LANDLORD

PURSUIT MANAGING AGENCY LIMITED 3RD LANDLORD

AND

ELIZABETH NJOKI KARIUKI (ENJOINED AS ADMINISTRATOR IN THE ESTATE OF STEPHEN MUNGAI KAMAU) INTERESTED PARTY

GEORGE MACHEHO MUNGAI (ENJOINED AS ADMINISTRATOR IN THE ESTATE OF OF STEPHEN MUNGAI KAMAU) INTERESTED PARTY

CECILIA WANJIKU MUNGAI INTERESTED PARTY

PAULINE WAMBUI MUNGAI INTERESTED PARTY

NANCY WAMAITHA MUNGAI INTERESTED PARTY



RULING

Introduction

1. The Tenant's Application dated 28.03.2024 seeks the following orders:-
 - a. That the Applicants be allowed to deposit the rent payable for the suit premises at the Tribunal.
 - b. That in the alternative, the Tenant be allowed to remain in possession of all that property known as L.R. No. 36/111/892 and L.R. No. 36/1/892 (the suit premises) subject to the payment of the rent due for the said premises.
 - c. That the Respondents be enjoined from in any manner whatsoever interfering with the Tenant's quiet enjoyment of the suit premises.

The Tenant's depositions

2. The affidavit in support of the Application sworn by the 1st Applicant/Tenant may be summarized as follows:-
 - a. That the Tenants entered into lease agreements for the suit properties dated 01.08.2018 and 04.09.2018.
 - b. That the Tenants constructed on the suit premises a two storey building with over twenty rental units with the construction being completed in November, 2019 and occupation therein commenced immediately thereafter.
 - c. That the Tenants remitted all rental sums to the 1st Landlord who intimated that she was the sole appointed administrator on behalf of the family and the receipt thereof was issued by the 3rd Respondent as an agent for the 1st and 2nd Respondents.
 - d. That in 2021, the High court in Succession Cause No. 434 of 2016, directed that the rental sums from the suit property be divided amongst the family/beneficiaries of the estate of the late Stephen Mungai Kareku.
 - e. That clause 5.3 of the Lease Agreements expressly provided for a renewal of the lease subject to the rent being revised, the Tenants duly invoked this clause and instructed their Counsel to issue the necessary notices for renewal of the leases.
 - f. That the Landlords as well as the 2nd to 5th Interested Parties through their Counsel agreed to the renewal of the leases creating a legitimate expectation on the part of the Tenants in favour of a renewal.
 - g. That taking into account the expressed consent to renew the leases, the Tenants undertook substantial renovations of the premises as they awaited the renewal of their leases.
 - h. That the Landlords have issued the Tenants with an unlawful and illegal notice to vacate the premises despite the Tenants complying with all rental payments.
 - i. That the Applicants have spent over Kshs. 50,000,000/= in developing the premises.
 - j. That the Respondents and Interested Party's shift of goal posts is illegal and against the spirit of the lease agreements executed between the parties.



The 1st Respondent's/Landlord's depositions

3. The Replying affidavit of Ms. Elizabeth Njoki Mungai sworn on 12.04.2024 may be summarized as follows;-
 - a. That the lease agreements entered into between the parties herein expired at the end of November and December 2023 respectively.
 - b. That the Tenants erected a two storey building and not a six storey building as they allege.
 - c. That the Tenants spent sixteen Million (Kshs. 16,000,000/=) in the construction of the suit premises and no renovations have been done in the premises as alleged.
 - d. That the 1st Respondent only collects rent for the spaces belonging herself and Pauline Wambui Mungai and she does not wish to renew the leases in respect of the said spaces.
 - e. That the 1st Respondent has no obligations remaining under the expired lease and the Tenants will not suffer any damages due to the expiry of the lease.

The Tenants Further Affidavit

4. The Further Tenants Affidavit sworn by the 1st Tenant may be summarized as follows;-
 - a. That the 1st Respondent is not the only Landlord in the suit premises save that she only has a portion out of the property accordingly the 1st Respondent cannot purport to entirely evict the Tenants well knowing that the other Landlords have conceded to the renewal of the leases.
 - b. That the Advocates for the 2nd Respondent Charles Maina Mungai, the 3rd Interested party Cecilia Wanjiku and the 5th Interested party Nancy Wamaitha Mungai have conceded to the renewal of the lease subject to a revision of the rent.

Analysis and determination

5. The only issue that arises for determination is whether the Tenants are entitled to the orders sought in their Application.
6. It is common ground that both lease agreements entered into between Elizabeth N. Mungai and Charles Maina Mungai on one hand and the Tenants on the other hand expired in November and December 2023 respectively.
7. It is also not disputed that the Tenants are still in occupation of the premises.
8. It is also evident that the Tenants have paid Kshs. 1,170,000/= being part payment of their respective share for the period between 01.01.2024 to 30.06.2024. These payments have been made outside the lease period.
9. From the correspondence annexed to the Tenants affidavits and from the affidavits and submissions of the parties, it is clear that the 1st Respondent/Landlord and the 4th Interested party object to the renewal of the lease agreements already expired. The other Respondents do not seem to have any problem with the renewal of the leases subject to a revision of the rent payable. Although the 1st Respondent and the 4th Interested party have expressed their intention not to renew the lease for the spaces deemed to be representative of their shares in the suit property, the pleadings are not clear which specific spaces they own/hold and I agree with the Tenants that it would be unjust at this stage in the proceedings to have the Tenants evicted from the entire premises. Even if an order for the eviction of the Tenants were to



be eventually made, the court would have to be satisfied of the specific arrears where the Tenants ought to be evicted to enable the other Respondents who wish to renew their leases to proceed to do so.

10. The Tenants have expressed their interest to have the leases extended and/or renewed pursuant to clause 5.3 of the lease agreements and have done so by their letters dated 09.06.2022 and 15.05.2023. On 16.06.2022, M/S Mulwa Kimaru & Co. Advocates while responding to the letter dated 09.06.2022 by Counsel for the Tenants indicated that their client was not opposed to the extension of the lease subject to the revision of rental income. The client in this case was M/s Pauline Wambui Mungai, the 4th Interested party.
11. In a letter dated 17.06.2022, the firm of Titus Marenje Kagiri & Company Advocates confirmed that they acted for the 2nd Respondent, the 3rd and 5th Interested parties. Counsel further confirmed in the said letter that his said clients were not opposed to the renewal of the leases.
12. I have also seen the letter dated 30.08.2023 where M/S Mulwa Kimaru & Company Advocates intimated that their client, the 4th Interested party was not open to the current lease.
13. In these circumstances, if the Tenants were ordered out of the suit premises, they would be greatly prejudiced considering a majority of the beneficiaries of the suit premises are willing to renew their leases. I think it is possible, upon determination of the specific portions to be taken up by the 1st Respondent and the 4th Respondent, to separate the leases so that each beneficiary would be free to deal with their shares in any manner that they deem fit.
14. I also do note that the parties who have expressed an interest to renew leases have already received the rent payments up to June 2024. In the letter dated 23.11.2023, written to Counsel for the Tenants by M/S Pursuit Managing Agency, one Musa Otieno, a director of the said agency confirmed that he would be collecting the share of the rent for the suit premises belonging to the 1st Respondent and the 4th Interested party on their behalf from 01.12.2023 and 01.01.2024 respectively.
15. I am of the view therefore that there is need to preserve the status as the Respondents and the Interested parties delineate their specific portions represented by their shares in the suit properties and consequently I will order that;
 - a. pending the hearing and determination of the Complaint filed by the Tenants, the Respondents and the Interested Parties are enjoined from interfering with the Tenants peaceful, quiet possession and use of all that property known as L.R. No. 36/111/892 and L.R. No. 36/1/892 situate at Eastleigh within Nairobi County.
 - b. That pending the hearing and determination of the Complaint filed by the Tenants, the Tenants are ordered to continue paying rent to the Respondents and the Interested Parties as shall be directed by the Respondents and the Interested Parties.
 - c. In the event that the Respondents and the Interested Parties will decline to accept the rent, the Tenants will be at liberty to deposit the same at the Tribunal.
 - d. That the OCS, Pangani police station shall where necessary, ensure compliance with these orders.
 - e. Each party will bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 21ST DAY OF JUNE, 2024

HON. CYPRIAN MUGAMBI - CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL



Delivered in the presence of Mr. Dawoo Farah for the Tenants and in the absence of the Respondents.

Court: Mention for directions on 27.06.2024 for directions on the Complaint

