



**Ogamba v Reheman (Tribunal Case E318 of 2023)
[2024] KEBPRT 658 (KLR) (7 May 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 658 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E318 OF 2023
N WAHOME & JOYCE MURIGI, MEMBERS
MAY 7, 2024**

BETWEEN

MICHAEL OGAMBA APPLICANT

AND

SHARIFA ABDUL REHEMAN RESPONDENT

JUDGMENT

1. When this matter came to court for hearing of the Application dated 30th November 2023, the court gave directions to the following effects:-
 - a. That this file being BPRT case No. E318 of 2023 to be consolidated with case No. BPRT E207 of 2023 with the former being the lead file.
 - b. The parties were to exchange their responses to the Application and file any necessary supplementary pleadings and the matter was to be mentioned on the 19th February 2024 for further directions.
2. This directions were given on the strength of submissions by the landlady to the effect that in file No. BPRT E207/2023, her notice of termination dated 28th September 2023 and which was to take effect on the 1st December 2023 had on the 4th December 2023 been nullified by Hon. P. May.
3. This obviously erroneous position had been confirmed by the Tenant/applicant which is obviously not surprising. The true position is that on the 14/12/2023, the Hon. P. May made orders in the following terms:-

“There is no reference filed to oppose the notice dated 28th September 2023. There being no opposition the notice takes effect as per the provisions of Section 6 of the Act. Reference dated 24/8/2023 is allowed”.



4. Inexplicably, this matter was again placed before Hon. P. May on the 14/2/2024. On that date, the counsel for the Tenant Mr. Egesa who was holding brief for M/S Ruto disclosed the filing of the present suit being BPRT No. E318/2023. He requested that both files be placed before me on the 19th February 2024 for further directions.
5. The Hon. P. May on that request made the following orders:-

“There is nothing pending in effect. There was no reference filed to oppose it. See orders of 4th December 2023 for what it is worth, matter placed with BPRT 318/2023 on the 19th February 2024”.
6. It is from the information above, that I made a determination to deliver a final judgement in this matter and not a Ruling as earlier intimated on the 4th April 2024. This is for the reasons that the orders of Hon. P. May dated 4th December 2023 allowed the landlady’s notice of termination dated 28th September 2023. From the above, there does not subsist a tenant and landlord relationship between the parties herein.
7. Section 2(1) of the Act provides that:-

“A controlled tenancy means a tenancy of a shop, hotel or catering Establishment-

 - a. Which has not been reduced into writing or
 - b. Which has been reduced into writing and which-
 - i. is for a period not exceeding five years, or
 - ii. Contains provisions for termination, otherwise than for breach of covenant within five years from the commencement thereof”.
8. I would further make reference to the case of:-

Pritam -vs- Ratilal (1972) EA where the court held that:-

“Therefore the existence of the relationship of landlord and Tenant is a pre-requisite to the application of the provisions of the act. Where such a relationship does not exist or it has come to or been brought to an end, the provisions of the Act will not apply. The application of the act is a condition precedent to the exercise of jurisdiction by the Tribunal. Otherwise the tribunal will have no jurisdiction. There must be a controlled Tenancy as defined under Section 2(1) to which the provisions of the Act can be made to apply outside it the Tribunal has no jurisdiction”.
9. It is noteworthy that there is no evidence to show that the orders of Hon. P. May were ever challenged in anyway whatsoever. This is also despite the same being brought to the attention of the parties by the same judicial officer on the 14th February 2024 when file case no. E207/2023 was placed before her.
10. From the foregoing, it is apparent that case no. E318/2023 was a still birth that could not be breathed life into in view of the said orders of 4th December 2023 and there is no longer any relationship between the parties herein capable of being adjudicated upon by this court. I would therefore proceed to dismiss the Tenant’s claim dated 30th November 2023 and the notice of motion thereof of even date with costs.
11. The upshot of all these is that I make the following orders:-
 - i. That the Tenant’s claim and notice of motion both dated 30th November 2023 are dismissed.



- ii. The landlady is at liberty to levy distress in recovery of all rents and mesne profits due to her until the date that the Tenant delivers vacant possession thereof or is evicted with the assistance of the OCS Nyali Police Station.
- iii. That the Tenant shall pay costs assessed at Kshs.30,000/-. Those are the orders of the court.

RULING DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 7TH DAY OF MAY 2024.

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI
MEMBER MEMBER**

BUSINESS PREMISES RENT TRIBUNAL BPRT

Ruling delivered in the presence of Mr. Iddi for the Landlady and M/S Rutto for the Tenant.

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI
MEMBER MEMBER**

BUSINESS PREMISES RENT TRIBUNAL BPRT

7TH MAY 2024

