



**Balleth v Said (Tribunal Case E189 of 2024)**  
**[2024] KEBPRT 1731 (KLR) (25 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1731 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**TRIBUNAL CASE E189 OF 2024**  
**P MAY, MEMBER**  
**NOVEMBER 25, 2024**

**BETWEEN**

**ABDALLA KHAMIS BALLETH ..... APPLICANT**

**AND**

**ABDUL ALI SAID ..... RESPONDENT**

**RULING**

1. The application before me is the landlord's notice of motion dated 15<sup>th</sup> August, 2024. The application sought for a plethora of orders including an order of eviction against the tenant. The application was premised on the grounds set out on the face of the application and those enumerated in the supporting affidavit sworn on an even date.
2. The application was opposed by the tenant who filed the grounds of opposition dated 10<sup>th</sup> September, 2024. The tenant cited the doctrine of sub-judice in that there existed a similar claim between the same parties at the Malindi Chief Magistrates courts. The tenant further filed a replying affidavit sworn on an even date. The tenant maintained that the application was frivolous and misconceived.
3. The parties elected to canvass the application by way of written submissions. The parties filed their respective submissions. I have summarized the same hereinbelow:

**Landlord's submissions**

4. The landlord took a two-pronged approach in their submissions; attacking the grounds of opposition raised by the tenant and strongly prosecuting their application. The landlord maintained that the grounds of opposition were unfounded and a show of lack of diligence on the part of the tenant. The mere denial of existence of landlord and tenant relationship was one that could be excused.
5. Turning to the merits of their application, the landlord gave a chronology of events that they argued support the prayers sought. It was the landlord's position that the landlord issued a notice



of termination against the tenant. The notice of termination was issued on 27/5/2024 and was to take effect on 1/8/2024. He maintained that the same was issued in accordance with the mandatory provisions of CAP 301.

6. The landlord maintained that contrary to the assertions by the tenant that there did not exist tenancy relationship, the landlord had tabled evidence to the contrary. He therefore urged the Tribunal to allow the application.

#### **Tenant's submissions**

7. The tenant stated that there existed Malindi Chief Magistrates court civil suit No. E238 of 2024 in which the dispute therein is substantially the same as the one in the present proceedings. The tenant also urged the Tribunal to dismiss the application for failing to have the accompanying statement of claim, verifying affidavit, supporting affidavit. On this front the Tribunal is utterly surprised that the counsel on record failed to appraise themselves with the rules of procedure before the Tribunal; a serious dereliction of duty by counsel.

#### **Analysis**

8. Is the landlord's reference and application as set out hereinabove sub judice having regard to the existence of Malindi Chief Magistrates court civil suit No. E238 of 2024?

Section 6 of the [Civil Procedure Act](#), as regards sub judice provides as follows:

-“No court shall proceed with the trial of any suit or proceeding in which, the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

9. In the case of; Kenya National Commission on Human Rights vs the Attorney General, IEBC & 16 Others, the Supreme Court of Kenya stated as follows:-

“The term “sub judice” is defined in Black’s Law Dictionary 9<sup>th</sup> Edition, as, Before the Court or findings for determination.” The purpose of the sub judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the court process and dismiss the chances of courts with competent jurisdiction issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub judice must therefore establish that there is more than one suit over the same subject matter, that one suit was instituted before the other, that both suits are pending before courts of competent jurisdiction and lastly that the suits are between the same parties or their representations.”

10. The landlord responded to the allegations of the existence of the proceedings at the Magistrates court by indicating that the same was dismissed. He attached an order to prove the same. This has not been controverted. On this therefore, the present proceedings is not sub-judice.
11. Turning on to the merits of the application, I have perused the notice of termination, the same conforms to the requirements of section 4 of CAP 301. The same was neither challenged or objected to by the tenant. It therefore took effect as at 1<sup>st</sup> August, 2024.



12. Having arrived at the above finding, the landlord's application is allowed in terms of prayers 2,3,5 and 5. Each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**HON. PATRICIA MAY**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the absence of the parties

