



Kinyanjui v Muthemba & another; Mungai & another (Interested Parties) (Tribunal Case E1063 of 2022) [2023] KEBPRT 1163 (KLR) (8 December 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1163 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1063 OF 2022
CN MUGAMBI, CHAIR
DECEMBER 8, 2023**

BETWEEN

ESTHER WANGARE KINYANJUI TENANT

AND

JOHN MUNGAI MUTHEMBA LANDLORD

AND

BEALINE KENYA AUCTIONEERS RESPONDENT

AND

DAVID MUTHEMBA MUNGAI INTERESTED PARTY

AMM HOLDINGS INTERESTED PARTY

RULING

1. The application by the 1st Interested party dated 7.06.2023 seeks orders that the Tribunal be pleased to review order No. 3 of the order made on 30.3.2023 and in its place make an order that the Tenant be directed to pay any rent arrears and rent through AMM Holdings Limited. The Applicant has also sought the costs of the application.
2. The application is brought on the grounds set forth on the face of the application, majorly that the 1st Respondent failed to disclose to the Tribunal that there were other beneficiaries and that he was one of four administrators appointed jointly to administer the Estate, that the Tribunal has the jurisdiction to review its orders, that there is sufficient material to warrant the grant of the orders sought, that the application has been made timeously, that the 1st Respondent not being the sole beneficiary of the Estate, he stands to suffer no prejudice.



The Applicant's depositions

3. The Applicant's affidavit in support of his application may be summarized as follows:-
 - a. That he is a director of the 2nd Interested party, competent to swear this affidavit.
 - b. That order No.3 of the orders issued on 30.3.2023 directed the tenant to pay any outstanding arrears into an account or agency to be provided by the 1st Respondent.
 - c. That the 1st Respondent on obtaining the said orders misled the Tribunal that he had the sole authority to collect rent from the subject property, while there were other beneficiaries.
 - d. That in the circumstances, there was material non-disclosure by the 1st Respondent which led to the making of order No. 3 on 30.3.2023 and issued on 4.4.2023.
 - e. That the Tribunal has the jurisdiction to make the orders for review.
 - f. That there exists sufficient reasons to warrant the grant of the orders sought.
 - g. That the 1st Respondent will suffer no prejudice if the orders sought are granted.

The 1st and 2nd Respondents replying affidavit

4. The 1st and 2nd Respondent replying affidavit sworn by John Mungai Muthemba on 23.10.2023, may be summarized as follows:-
 - a. That he is the landlord of the demised premises well versed with the dispute herein and competent to swear the affidavit.
 - b. That the application by the 1st Interested party does not disclose any ground for review under the clear provisions of Section 80- of the [Civil Procedure Act](#) and order 45 of the [Civil Procedure Rules](#).
 - c. That the 1st Respondent is not guilty of any material non-disclosure as his replying affidavit sworn on 28.11.2022 clearly brought to the fore all the necessary information.
 - d. That each of the administrators is personally accountable for his/her actions in regard to the estate and does not require the consent of the other administrators to take any action for the good of the estate.
 - e. That the High court already found the Applicant David Muthemba Mungai and Jane Njeri Mungai as incompetent in their position as administrators of the estate and consequently revoked their appointment as administrators.
 - f. That the 1st Interested party was therefore prohibited from collecting rent even through his agents M/S AMM Holdings Limited.
 - g. That the account of AMM Holdings Ltd held at ABSA Bank, Market Branch, Nairobi has been suspended.

The 1st Interested party's supplementary affidavit

5. The supplementary affidavit sworn by the 1st Interested party may be summarized as follows:-
 - a. That Kentazuga Hardware Limited is the owner and landlord of the premises known as L.R. No. 209/663 "Beaver House."



- b. That the 1st Interested party is a shareholder, director of the company, and an administrator and beneficiary of the estate of the late Andrew Mungai Muthemba.
- c. That the beneficiaries of the estate of the late Andrew Muthemba incorporated AMM Holdings Ltd, the 2nd Interested party to facilitate the joint administration of the aforesaid estate.
- d. That the administrators are the bonafide shareholders of AMM Holdings Ltd and have a beneficial interest in the property.
- e. That the 1st Respondent has alienated the other beneficiaries from benefiting from the estate even after the distribution of the estate has been finalized.
- f. That by the letter dated 19.12.2022, the 1st Interested party communicated that the 2nd Respondent was to collect rent for the suit premises.
- g. That the beneficiaries and shareholders of AMM Holdings have held several meetings but the 1st Respondent has refused to comply with any of the resolutions reached at the said meetings.
- h. That the mode of payment of rent has already been decided and agreed upon by all the administrators except the 1st Respondent.
- i. That as a compromise, the 1st Interested party has relinquished his signatory status in the account held by AMM Holdings.
- j. That the company is the legal proprietor of the suit premises and authorizing the 1st Respondent to collect rent on behalf of the company was an error apparent on the face of the record.
- k. That the 1st Respondent did not disclose that he had no authority to act on behalf of the company and that he is not representative of the wishes of the estate of the late Andrew Mungai Muthemba.
- l. That the 1st Respondent shall suffer no prejudice if the orders sought are granted.

Analysis and determination

6. The issue that arises for determination in this application is whether the prayers for review made by the 1st Interested party should be granted or not.
7. The orders sought to be reviewed emanate from the Tribunal's ruling of 30.3.2023 and particularly order 3 thereof which was in the following terms;-

“That the tenant shall pay any outstanding and further rent into an account or agency appointed by the 1st Respondent.”

It must be borne in mind that the ruling was made while the only parties to the suit were the tenant, the 1st Respondent and Bealine Kenya Auctioneers. The ruling was further made on the basis that the 1st Respondent, as an administrator of the Estate of the late Andrew Mungai Muthemba, and not the tenant ought in the circumstances that obtained, to be the one to nominate where the rent for the suit premises would be paid. At paragraph 9 of the said ruling, the Tribunal observed as follows:-

“In view of the ruling by the Judge, appointing new administrators for the estate of the deceased Andrew Mungai Muthemba, it is not for the tenant to determine to whom she



should pay rent. I have not seen any evidence of a disagreement between the administrators of the estate of the deceased. The tenant is therefore duly bound to pay rent for the suit premises to the agents appointed by the 1st Respondent. If the other administrators of the estate will have an issue with that position, it is open for them to challenge the same and not the tenant.”

8. The 1st Interested party’s application is in line with the above observations by the Tribunal. There is no contest that the suit premises belong to Kentazuga Holdings Limited which forms part of the Estate of the deceased Andrew Mungai Muthemba. From the CR12 (Form) from the Registrar of Companies, the directors of the company are John Mungai Muthemba (1st Respondent), Mungai Muthemba, Jane Njeri Mungai, Andrew Mungai Muthemba and David Mungai Muthemba (1st Interested party).
9. It is also not disputed that the beneficiaries of the Estate of the late Andrew Mungai Muthemba incorporated AMM Holdings Ltd, the 2nd Respondent to facilitate the joint management of the estate of the deceased. The Judgment of the High court in Succession Cause No. 2501 of 2003 recognizes shares in Kentazuga Hardware Ltd as an asset of the estate of amenable available for distribution.
10. In a letter dated 19.12.2022, and signed by Raymond Mungai, Ricky Mungai, Jane Njeri Mungai, David Muthemba Mungai, Marvis Wangari Mungai and Kevin Chege Mungai as administrators/beneficiaries, the said signatories advised all the tenants in the suit premises to deposit their rent in the Estate Bank account (AMM Holdings Ltd.).
11. It is now clear that the 1st Respondent is one of the administrators of the estate of the deceased Andrew Mungai Muthemba. It is also clear that the suit premises is the property of Kentazuga Hardware Ltd wherein the 1st Respondent is just one of the shareholders who is also set to benefit from the shares of the deceased Andrew Mungai Muthemba amongst other beneficiaries of the Estate of the said deceased.
12. In these circumstances, I do agree with the Applicant herein that the fact that the 1st Respondent is a shareholder does not equate him to the company which is a legal entity.
13. I therefore agree with the Applicant that the interests of the other shareholders were not disclosed by the 1st Respondent and the ruling was delivered without considering the said interests.
14. To the extent that I appointed the 1st Respondent as the one to determine where the rent for the said property was to be deposited and flying on the face of the existence of the company Kentazuga Hardware Ltd which owned the property and to which there are other shareholders, and further on the face of the fact that Kentazuga Hardware Ltd had already designated where the rent for the suit premises ought to have been paid, there is clearly an error apparent on the face of the record.
15. I am also satisfied that in view of the now disclosed interest of the 1st Interested party in the suit premises, and the fact that other beneficiaries have authorized him to act on their behalf both as shareholders and beneficiaries, there is sufficient reason for the court to exercise its discretion in favour of the Applicant in granting the orders sought.

Disposition

16. In view of the foregoing, the orders which commend themselves to the Tribunal and which I hereby make are the following:-
 - a. That the Tribunal be and is hereby pleased to review order No. 3 of the orders made on 30.3.2023.



- b. That the tenant is directed to pay any rent and rent arrears for the suit premises through AMM Holdings Ltd.
- c. That each party shall bear its own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF DECEMBER 2023

HON. CYPRIAN MUGAMBI

CHAIRPERSON

12.2023

In the presence of;

Ms. Wataka for the Applicant

Mr. Kamau holding brief for Mr. Maina for the 1st and 2nd Respondents.

