



**Chege v Barake t/a Faalsha Holdings Limited (Tribunal Case
E1288 of 2023) [2024] KEBPRT 468 (KLR) (2 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 468 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1288 OF 2023
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
APRIL 2, 2024**

BETWEEN

PETER CHEGE TENANT

AND

KENNEDY BARAKE T/A FAALSHA HOLDINGS LIMITED LANDLORD

RULING

1. The Landlord/Respondent herein has raised a Preliminary Objection to the Tenant's Notice of Motion dated 21/12/2023 and the entire suit on the following grounds;
 - i. The present suit has been brought against the wrong party since the lease agreement attached to the Tenant's bundle of documents clearly shows that the Landlord is Faalsha Holdings Limited and not Kennedy Barake as shown in the pleadings filed in this suit.
 - ii. The Tenant has moved the court by way of a Complaint instead of filing a Reference as provided by Section 12 (4) of Cap 301.
 - iii. The Notice of Motion dated 21/12/2023 is fatally defective as it does not comply with the provisions of Order 51 Rule 4 and 13 (2) of the Civil Procedure Rules, 2010.
 - iv. The orders issued by the court on 22/12/2023 cannot be enforced since the same have been issued against the wrong party.
2. The tenant filed the instant suit by way of a complaint dated 21st December 2023 seeking various orders against Kennedy Barake T/a Faalsha Holdings Limited. Among the documents annexed to his list is a lease agreement dated 1st July 2023 between Faalsha Holdings Limited as Lessor and Peter Chege (Tenant herein) as Lessee for a period of 5 years. The Lessor is defined in the lease as a Limited Liability Company incorporated in the Republic of Kenya. The said lease is executed by both parties and duly witnessed by an advocate.



3. In his response dated 5th January 2024 to the Preliminary Objection, the tenant contends that Mr. Kennedy Barake held himself out as the Landlord, the sole authority of Faalsha Holdings Limited and indeed carried out the daily undertakings of the same as such. It is further argued that the Respondent has not provided any employment letter to confirm that he is a mere employee of Faalsha Holdings Limited and neither has he provided a CR 12 to confirm the Directors of the alleged Company nor a certificate of incorporation thereof. The tenant relies on the doctrine of estoppel enshrined in Section 120 of the [Evidence Act](#) and the decision in *Raila Odinga & Others Vs William Ruto & others S.C* Petition No. E003 OF 2022 in support of his submission on the burden of proof under Section 107 of the [Evidence Act](#).
4. The Respondent filed a further affidavit sworn by Kennedy Barake attaching the CR 12 document for Faalsha Holdings Limited which confirms that the entity is a limited liability Company and that the Respondent is neither a director nor a shareholder thereof.
5. In the case of *Kolaba Enterprises Limited Vs Shamshudin Hussein Varvani & Another* (2014) eKLR, the Superior Court at paragraph 20 had the following to state on the doctrine of a Company's corporate personality;

“It should be appreciated that the separate corporate personality is the best legal innovation ever in company law. See the famous case of *Salomon & CO LTD v Salomon* [1897] A.C. 22 H.L that a company is different person altogether from its subscribers and directors. Although it is a fiction of the law, it still is as important for all purposes and intents in any proceeding where a company is involved. Needless to say, that separate legal personality of a company can never be departed from except in instances where the statute or the law provides for the lifting or piercing of the corporate veil, say when the directors or members of the company are using the company as a vehicle to commit fraud or other criminal activities. And that development has been informed by the realization by the courts that over time, promoters and members of companies have formulated and executed fraudulent and mischievous schemes using the corporate vehicle. And that has impelled the courts, in the interest of justice or in public interest to identify and punish the persons who misuse the medium of corporate personality. That short treatise is necessary in answering the question whether the defendants are the same parties or being sued in the same capacity as in the previous suit.” (emphasis added)

6. There being evidence that the Lessor with whom the tenant entered into the lease agreement is a Limited liability Company, it follows that any suit arising from the lease agreement could only be instituted against it and not against its directors, shareholders or even employees. It is therefore our view that the instant suit is incompetent and bad in law since the tenant is non-suited against the Respondent.
7. The foregoing holding is supported by the court of appeal decision in the case of *Agricultural Finance Corporation Vs Lengetia Company Limited & Another* (1986) eKLR, where it was observed as follows;

“As it stated in Halsbury's Laws of England, 3rd Edition, Volume 8 at paragraph 110:

“As a general rule a contract affects only the parties to it, and cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it. The fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom



the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue upon the contract.”

8. Finally, the tenant is not entitled to adduce oral evidence to contradict the very clear terms of the contract entered into with the said Lessor in line with the provisions of Section 97(1) of the Evidence Act, Cap. 80, Laws of Kenya which stipulates as follows;
 - (1) When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act.”
9. Section 3 of the Law of Contract Act, Cap. 23 defines the term disposition to include a transfer. The word transfer is further defined to include a lease inter-alia under the said Act.
10. It therefore follows with the foregoing observations that the Respondent’s Preliminary objection is well taken and the instant suit is a candidate for striking out.
11. Having held as above, there is no need to address the other grounds of objection, as doing so will be superfluous and an academic exercise.
12. In conclusion, the final orders which commend to us in this matter are;
 - a. The Respondent’s notice of preliminary objection dated 3rd January 2024 is hereby allowed and the tenant’s suit is hereby struck out with costs to the Respondent.
 - b. The Respondent’s costs are assessed at Kshs 25,000/= against the tenant.

It is so ordered.

DATED, SIGNED & VIRTUALLY DELIVERED THIS 2ND DAY OF APRIL 2024

HON. GAKUHI CHEGE

PANEL CHAIRPERSON

HON. JOYCE A. OSODO

PANEL MEMBER

In the presence of:

Otieno for the Tenant/Applicant

Respondent absent

