



**Kigo & another v Mungai & 9 others (Tribunal Case
E1121 of 2023) [2024] KEBPRT 786 (KLR) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 786 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1121 OF 2023
CN MUGAMBI, MEMBER
MAY 22, 2024**

BETWEEN

ALEX MBUGUA KIGO 1ST PLAINTIFF

PENINAH NJAMBI KIGO 2ND PLAINTIFF

AND

JOSEPH NDUNG’U MUNGAI 1ST RESPONDENT

PETER KIRONJI NDUNG’U 2ND RESPONDENT

TERESIA WAITHERA MUNGAI 3RD RESPONDENT

GLADYS WAIRIMU MACHARIA 4TH RESPONDENT

MARTIN MUIRURI NJOKI 5TH RESPONDENT

SILVESTER MWAURA KAGOTHO 6TH RESPONDENT

OSCAR MUNENE NJERI 7TH RESPONDENT

PAUL KIRATU CHEGE 8TH RESPONDENT

LUCY NJAMBI WANG’ENDO 9TH RESPONDENT

EUNICE HUINI KIARAHO 10TH RESPONDENT

RULING

1. This Ruling is in respect of the Applications dated 10.11.2023 and 5.1.2024 both filed by the Landlords/Applicants and both opposed by the Interested Party.



2. In the Application dated 10.11.2023, the Applicants seek orders that the Tenants be ordered to give vacant possession of the units they occupy and the Applicants be granted breaking orders to enable them to take possession of the suit premises and let them out to other Tenants.
3. In the Application dated 5.1.2024, the Applicants have sought orders that the Tenants be ordered to deposit their monthly rent at the Tribunal pending the hearing of the suit herein and further that the 10th Respondent/Interested party be restrained from collecting rent from the Tenants pending the hearing and determination of this suit.
4. Both motions have also sought the assistance of the OCS Limuru police station in ensuring compliance with the orders.

The Applicant's depositions in support of both Applications

5. By his Affidavit sworn on 10.11.2023 in support of his motion of even date, the 1st Applicant (hereinafter the Applicant) has deponed that himself and the 2nd Applicant are the beneficiaries / beneficial owners of the suit premises located at Limuru Ngarariga Shopping Centre (the suit premises).
6. The Applicant depones in his said affidavit that on 21.8.2023 he issued termination notices upon the Tenants who have failed to pay rent since the demise of his father and the Tenants have not opposed the said notices at the Tribunal.
7. In his other affidavit sworn on 5.1.2024, the Applicant has deponed that himself and the 2nd Applicant are the beneficial owners of the suit premises.
8. The Applicant has further deponed that the 10th Respondent/Interested party has been illegally receiving rent from the Tenants by purporting to be the Landlord of the suit premises.
9. It is the Applicants view therefore that justice would be served by having the Tenants deposit the rent in the Tribunal.

The Tenant's depositions

10. The Tenants though served and being represented by Counsel for the Interested party, 10th Respondent, have not filed any responses to both Applications. The only document filed by the Tenants is an "authority to swear affidavit" in favour of Mr. Joseph Ndung'u Mungai who does not seem to have filed any affidavit pursuant to the said authority.

The Interested Party's/10th Respondent's depositions

11. The Interested Party has deponed in her replying affidavit sworn on 5.1.2024 that she is the landlady of the suit premises and that the Applicants are her biological children.
12. The Interested party further depones that the Tenants herein have been paying rent to her since the time her husband passed on and she utilizes the rent to pay for her medication and school fees for her children.
13. It is further deponed that the Applicants have not demonstrated their contribution in the construction of the suit premises and their suit does not take into account their other two siblings.
14. The Interested Party depones that the Applicants collect rent from other premises constructed by her late husband and they have failed to disclose this fact.



Analysis and determination

15. Both parties have filed their respective submissions and I will consider them in this ruling.
16. The only issue that arises for determination is whether the Applicants are entitled to the orders sought in their two Applications.
17. The dispute in this matter is one in reality between the Applicants and the 10th Respondent. The Applicants are the biological children of the 10th Respondent and their deceased father (whose name has not been disclosed). The fight between these parties is as to the question as to who between them is entitled to the rent collected from the suit premises. It is rather obvious that the Tenants have been caught up in the middle of this fight between the Applicants and their mother.
18. From the Affidavits by the parties, it is clear that the deceased father and husband of the parties respectively was the Landlord of the Tenants in the suit premises. It is not clear how the 10th Respondent/Interested party came to be in the premises and how she took over the premises and started to allegedly collect rent from the Tenants. Although the Applicants and the 10th Respondent claim to be the Landlords of the Tenants to the exclusion of each other, none of the parties has produced any evidence in support of this allegation. I have not seen any evidence of any of the parties receiving rent from any of the Tenants.
19. The Applicants have also deponed in their Affidavits that they helped their deceased father to construct part of the suit premises while their mother was away. Again, I have not seen any evidence of the Applicants contribution in the construction of the suit premises.
20. The Applicants and the 10th Respondent have not filed any succession cause to determine who takes what from the Estate of their deceased father and husband. Earlier efforts to have the parties reconcile and agree on a formula to share the rent were not successful.
21. In view of the wrangles between the Applicants and the 10th Respondent and in order to protect the Tenants who are in my view innocent, I will make the following orders:-
 - a. That the 10th Respondent will give an account of all the rent she has received from the suit premises since February 2023 within the next fourteen (14) days.
 - b. That the Tenants will deposit their rent at the Tribunal pending the hearing and determination of this Reference.
 - c. That the question as to who is the Landlord of the suit premises will be determined along the hearing of the Reference.
 - d. The notices to terminate tenancy given to the Tenants will be stayed pending the hearing and determination of the Reference and or further orders of the Tribunal.
 - e. That this matter proceeds to hearing on a priority basis.
 - f. That costs will be in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF MAY,2024

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL



Delivered in the presence of Mr. Alex Kigo –Applicant and in the absence of the Respondents and Counsel

Court: The Reference to be heard on 27.6.2024. Hearing notice to issue. Parties to comply with order 11 of the [Civil Procedure Act](#).

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

