



REPUBLIC OF KENYA



**Kamau v Kamami & 15 others (Tribunal Case E596 of 2023)  
[2023] KEBPRT 1165 (KLR) (8 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1165 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E596 OF 2023  
CN MUGAMBI, CHAIR  
DECEMBER 8, 2023**

**BETWEEN**

**KENNEDY WACHIRA KAMAU ..... LANDLORD**

**AND**

**GEORGE MWANGI KAMAMI ..... 1<sup>ST</sup> APPLICANT  
LEAH WANGECHI NJERI ..... 2<sup>ND</sup> APPLICANT  
ELENAH WANGUI ..... 3<sup>RD</sup> APPLICANT  
SAMUEL MUNYOKI ..... 4<sup>TH</sup> APPLICANT  
JOYCE MUNIU ..... 5<sup>TH</sup> APPLICANT  
JAMES MACHARIA ..... 6<sup>TH</sup> APPLICANT  
JOYCE KABUGA ..... 7<sup>TH</sup> APPLICANT  
SAMUEL MWANGI ..... 8<sup>TH</sup> APPLICANT  
DENNIS IRUNGU MUNGAI ..... 9<sup>TH</sup> APPLICANT  
GLORIA MUTUKU ..... 10<sup>TH</sup> APPLICANT  
HUMPHREY NG'ANG'A IRUNGU ..... 11<sup>TH</sup> APPLICANT  
RISPER MUITA ..... 12<sup>TH</sup> APPLICANT  
NJOROGE MUNGAI ..... 13<sup>TH</sup> APPLICANT  
JANEFER WAMBUI IRUNGU ..... 14<sup>TH</sup> APPLICANT  
PAUL THUNGU KING'ORI ..... 15<sup>TH</sup> APPLICANT  
SAMUEL MAINA WANGECHI ..... 16<sup>TH</sup> APPLICANT**



## RULING

### Introduction

1. The application by the tenants dated 4.9.2023 seeks orders that the ruling on the application dated 15.6.2023 be arrested pending the hearing and determination of the reference, that the Applicants be granted leave to file their references out of time and that the landlord/Respondent be restrained from in any manner whatsoever, interfering with the Applicants tenancies pending the hearing and determination of the reference.

### The Applicants depositions

2. The Applicants' affidavit sworn by Elenah Wangui on 4.9.2023 may be summarized as follows:-
  - a. That she has the authority of her fellow tenants/Applicants to swear the affidavit on her behalf and on their behalf.
  - b. That they were served with the notice to terminate their tenancies.
  - c. That through a mistake and inadvertently, the tenants in response to the notice to terminate their tenancy filed a complaint via BPRT Case No. E274 of 2023.
  - d. That the Respondent has prosecuted this matter without involving the Applicants and the Applicants only came to know of this matter when the same was listed for ruling.
  - e. That the Applicants are desirous of prosecuting their references and only request to be allowed to file their references out of time.
  - f. That the issues raised in the Respondents affidavit are the same issues raised in BPRT Case No. E274 of 2023.
  - g. That the Applicants did not sit on their rights as they filed BPRT Case No. E274 of 2023 which matter has indeed been proceeding in court.
  - h. That the issues of filing a complaint instead of a reference should not be a hindrance to the administration of justice.
  - i. That it is not true that the landlord intends to use the premises for his personal business, the truth of the matter is that there is a business rivalry between the 1<sup>st</sup> and 2<sup>nd</sup> tenants and the Respondent on who ought to receive the rent for the premises.
  - j. That this Application ought to be allowed in the interests of justice.

### The Respondent's depositions

3. The affidavit of the Respondent in response to the application by the tenants may be summarized as follows:-
  - a. That on 2.3.2023, he issued legal termination notices in terms of Section 4(2) of [Cap 301](#), the same were served upon the Applicants who accepted the service thereof.
  - b. That the notices were to take effect on 1.6.2023.



- c. That the tenants did not file any references to oppose the notices to terminate their tenancies as a consequence of which the landlord applied for their eviction.
- d. That the landlord wants the premises for his own personal use and he has the financial muscle to carry out his intended business.
- e. That the filing of a complaint in opposition to a notice to terminate tenancy instead of a reference is fatal to the Applicants case and should not be entertained by this Honourable Tribunal.
- f. That the 1<sup>st</sup> and 2<sup>nd</sup> tenants have not paid rent for nine (9) months amounting to Kshs. 120,000/= and Kshs. 1,080,000/= respectively.
- g. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' intention is to take over the suit premises via the main landlord by depositing their rent directly to the said landlord.
- h. That it is only fair that the tenants are ordered to render vacant possession of the premises.

### **Analysis and determination**

- 4. The issues that arise for determination in this application are in my view, the following;-
  - a. Whether the Applicants ought to be granted leave to file their references in opposition to the landlords notices to terminate tenancy dated 2.3.2023 out of time.
  - b. Whether this matter ought to be consolidated with BPRT Case No. E274 of 2023.
  - c. What orders ought to be issued in disposing of the application.

### **Issue A**

- 5. The Applicants admit that they were served with the notices to terminate their tenancies. They further own up to the mistake that instead of filing a reference in opposition to the notices to terminate tenancy, they filed a complaint in BPRT Case No. E274 of 2023. I do note that the tenants are still in occupation of the suit premises and are paying rent save for the 1<sup>st</sup> and 2<sup>nd</sup> tenants who are said to be in rent arrears amounting to Kshs. 120,000/= and Kshs. 1,080,000/= respectively.
- 6. I have perused the complaint filed by the tenants in BPRT Case No. E274 of 2023 and it is in the following terms;-

“The complaint concerns the 1<sup>st</sup> Respondent in that he has served us with notices to vacate purporting to be the landlord yet he is unknown to us. The only person we know as our landlord and whom we have been paying rent to is the 2<sup>nd</sup> Respondent herein. We have heavily invested in the premises and hence we are apprehensive that we might lose the same, our only source of income unless the orders sought are granted in the interest of justice.”

- 7. The tenants in BPRT Case No. E274 of 2023 and who are the Applicants in this matter filed their application in the complaint file on 6.3.2023 and at paragraph 4 of the affidavit in support thereof deponed as follows;-

“That on or about 3.3.2023, we received notices to vacate from the 1<sup>st</sup> Respondent who is a stranger to us by which he claims that he wants to have back possession of the premises for his own use.”



8. It is therefore true that though mistaken in filing the complaint purporting to respond to the notice to terminate their tenancies, the tenants indeed did not sleep on their rights, they cannot be said to have been indolent when they filed what they thought was a challenge to the notices.
9. I have noted that the tenants were not represented by legal Counsel in BPRT Case No. E274 of 2023. Their admitted mistake is a genuine mistake in the pursuit of justice and I agree with them that the said mistake should not be a hindrance to the pursuit of their justice.
10. Does the Tribunal have power to extend the time within which the tenants can file their references out of time?

Section 6(1) of [Cap 301](#) in this regard provides as follows:-

1. “A receiving party who wishes to oppose a tenancy notice and who has notified the requesting party under Section 4(5) of this Act that he does not agree to comply with the tenancy notice may before the date upon which such notice is to take effect, refer the matter to a Tribunal whereupon such notice shall be of no effect until and subject to the determination of the reference by the Tribunal.”

Provided that a Tribunal may for sufficient reason and on such conditions as it may think fit permit such a reference notwithstanding that the receiving party has not complied with any requirements of this Section. (underlining mine).

11. It is now clear from the above provisions of the law that the Tribunal has the power to extend time to a tenant within which to comply with the requirements of Section 6. One of those requirements is to the filing of a reference. The Tribunal only needs to be satisfied that there are sufficient reasons advanced by the party seeking the relief before the relief is granted.
12. I am satisfied, in the circumstances of this case that the Applicants genuinely desired to oppose the notices to terminate their tenancies but due to what I would term ignorance of the requirements of Cap 301 proceeded to file a complaint instead of a reference. I am also satisfied that the affidavit by the tenants raise issues worthy of consideration during the hearing of their intended references.

## Issue B

13. I do not think this case and BPRT Case No. E274 of 2023 can be consolidated. Case No. E274 of 2023 commenced by way of a complaint while the instant case can only proceed by way of a reference. There are different consequences in proceedings in the two cases, for example decisions of the Tribunal in matters commenced by complaints are not appealable while the right of appeal is provided for in matters commenced by way of references under Section 6(1). Further, proceedings under complaints are deemed to be determinations in minor infractions like locking business premises, disconnecting water, disconnecting electricity and such like complaints. References under Section 6 of the Act deal with termination of tenancies or alterations of the terms thereof. I agree with the submissions of Counsel for the landlord in this regard when he submits that the two cases are not two peas in a pod! and I further agree with the Respondent when he quotes the decision in [Mike Muli vs Justus Mwandikwa Kilonzo & 4 Others](#) [2022] eKLR where the court stated;-

“Finally it is difficult to understand how a party to a complaint can be constituted and/or be deemed to be a party to a reference yet the dichotomy between a complaint and a reference is so evident and diverse, both in terms of the provisions of the law under which same are lodged as well as definitions assigned thereto.”



14. The return on this issue is therefore that, no, the two suits cannot be consolidated for the reasons advanced above.

**Issue C**

15. In disposing of this application, the orders which commend themselves to the Tribunal and which I hereby issue are as follows:-
- a. That the tenants/Applicants are granted leave to file their references in opposition to the landlords notice to terminate tenancy dated 2.3.2023.
  - b. That the Applicants shall file their said references within fourteen days from the date of this ruling failing which the order for extension will stand discharged.
  - c. That the prayer for consolidation of this suit with BPRT Case No. E274 of 2023 is declined.
  - d. That the landlord is at liberty to legally initiate proceedings for recovery of rent from any of the Applicants.
  - e. That the tenants/Applicants shall bear the costs of this application.
  - f. That upon the filing of the references, the notices issued to the tenants shall be of no effect until the references are determined by the Tribunal in terms of Section 6(1) of Cap 301.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8<sup>TH</sup> DAY OF DECEMBER 2023**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**12.2023**

**In the presence of;**

Ms. Oketch for the Applicants

Mr. Kembi holding brief for Ms. Wacuka for the 2<sup>nd</sup> Respondent

Kiiru holding brief for Mr. Kamotho for the landlord/Respondent

