



**Mufadhal & 4 others v Maina (Tribunal Case 108 of 2023)
[2023] KEBPRT 1168 (KLR) (7 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1168 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 108 OF 2023
N WAHOME, MEMBER
SEPTEMBER 7, 2023**

BETWEEN

MUFADHAL & 4 OTHERS APPLICANT

AND

WINNIE NJERI MAINA RESPONDENT

RULING

1. This matter came up for the hearing of the Tenant/Applicant's applications dated 15/8/2023 and 22/8/2023 on the 5/9/2023. The Tenant/Applicant was represented by Mr. Masove whereas Mr. Hamza represented the Respondents/Landlords
2. However, before the applications could be heard, preliminary issues arose. This was mainly that the properties of the Tenant had been distrained and that there was high likelihood of the same being auctioned.
3. Indeed, a notification of sale of movable property dated 21.8.2023 was annexed to the supporting affidavit on the notice of motion application dated 22.8.2023 and marked "WNM-5".
4. It was confirmed though by both counsels from the bar that the said properties as attached by M/S Jeneby's Auction had not been sold. To preserve the *status quo*, this court issued orders stopping the sale of the same until today the 7.9.2023 when this court would issue fresh directions in this matter.
5. In their presentations to the court as aforesaid, the parties did not seem to agree on any issue. The Applicant denied the jurisdiction of this court, that the Respondents were not her landlords and made an averment that she had paid all the rents due on the demised premises including those of the month of August 2023. Receipts are duly filed to support that position.



6. On their part, the landlords/Respondents submitted that the Applicant was their Tenant and that this court therefore had jurisdiction in this matter. It was their contention that the Tenant had been paying rent until May 2023 when she abruptly stopped remitting the same.
7. Mr. Hamza vehemently protested grant of any interim orders on the Applicants application. It was his position that the Applicant did not come to court with clean hands.
8. On perusing the pleadings herein, I have noted the following salient features:-
 - a. That the Landlord's notice to alter the terms of Tenancy under Section 4(2) of Cap 301 was purportedly served to one Moses Mwangi Wachira of Mwembe Kuku Area and not to the Tenant herein. See annexure "MMK 8" in the Respondent's Replying affidavit sworn on the 31.8.2023.
 - b. That the affidavit of service sworn on the 31.1.2023 is further annexed to the Replying affidavit by the Respondents sworn on the 31.8.2023 as evidence of service of the Application dated 5.5.2023. This is curiously an impossibility.
 - c. The parties herein in their filings address two (2) different properties. The Applicant has annexed a lease agreement dated 31.1.2023 showing that the property in which the subject matter herein resides is Title NO. Mombasa/Block XXVII/565 (Annexure "WNM2" in the supporting affidavit to the application dated 22.8.2023). The Respondents refer to their title as No. Mombasa/Block XVII/565 and annexed the same as "MMK2" in their replying affidavit sworn on the 31.8.2023.
 - d. The jurisdiction of this court to address all the issues in question from both parties pleadings is heavily questioned. This is particularly so by the Tenant. I appreciate that jurisdiction is such a cardinal and fundamental, an issue that the same cannot be assumed, ignored and/or wished away. The same would require immediate address by this court.
 - e. The Respondents on their part claim that this court has the requisite jurisdiction to hear and dispose of this matter. This is the very reason why they filed the present reference herein. They have also claimed that to confirm the landlord/Tenant relationship, the Tenant has been paying rent to them since until May, 2023 when the same abruptly stopped. However, nothing to show the relationship or evidence of such payments has been presented to court. It has also not been disclosed when the relationship commenced and the terms that governed the same if at all.
 - f. The lease agreement aforesaid between the Applicant and one Gullamabbas Mulla Karimjee was for payment of rent advance, for the 2nd phase of the agreement commencing January, 2028 at Kshs. 40,000/= per month. That amount was curiously paid at the execution of the said lease agreement on the 31.1.2023 as per the Applicant's annexure WNM-4 in her supporting affidavit to her notice of motion application dated 22.8.2023. The amount paid was Kshs. 240,000/=. This was five (5) years before the same became due.
 - g. The parties herein from their pleadings and even in their submissions to the court did not seem motivated to avail Gullamabbas Mulla Karimjee as a party in this proceedings despite him appearing to be a very central player in the dispute herein.
9. From the foregoing and in the wholesome circumstances of this matter, looking at the filings by both parties in their totality, also taking consideration the oral submissions by counsels, the reliefs that commend themselves to me at this interim stage are the following:-
 1. That I will grant stay of execution of the orders of this court dated the 10/5/2023.



2. The Applicant shall deposit the claimed rents for the months of June, July, August and September, 2023 at Kshs. 30,000/= per month totaling Kshs. 120,000/= within the next seven (7) days of the date hereof into this court.
3. That this matter shall be heard on the issue of jurisdiction on priority and at the earliest possible time convenient to the parties.
4. The Applicant will in the interim be restored to the demised premises with her tools of trade and be allowed to peaceably run and operate her business pending the hearing and disposal of No 3 herein above.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF SEPTEMBER 2023.

HON. NDEGWA WAHOME, MBS

MEMBER

In the presence of;

Mr. Masove for the Tenant/Applicant

Mr. Hamza for the landlord/Respondent

