



**Enkare Name Lock Resort Ltd v Jepkoech & 2 others (Tribunal Case
E927 of 2023) [2023] KEBPRT 1328 (KLR) (28 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1328 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E927 OF 2023
CN MUGAMBI, CHAIR
NOVEMBER 28, 2023**

BETWEEN

ENKARE NAME LOCK RESORT LTD TENANT

AND

JANE JEPKOECH 1ST RESPONDENT

NYAMBOSA G MAROA 2ND RESPONDENT

JEPHYS AUCTIONEERS 3RD RESPONDENT

RULING

1. The Respondent's notice of preliminary objection dated 28.09.2023 is brought on the grounds: -

“that this Honourable Tribunal lacks jurisdiction to hear and determine this matter as the same matter between the same parties is pending currently before the Environment and Land Court of Kenya under ELC Case NO. E014 of 2023 Enkare Namelock Resort Limited vs Jane Jepkoech & Nyambosa Maroa t/a Jephy's Auctioneers.”

The Respondent's Submissions

2. Summarized, the Respondent's submissions are to the effect; -
- That the existence of ELC No. E014 of 2023 in the High Court over the same subject matter and between the same parties presents the issue of sub-judice. That the tenant with the full knowledge of the ongoing suit opted to go ahead and institute another suit in the Tribunal.
 - That the mischief the sub judice rule aims to avoid is the abuse of court process and the issuing of conflicting decisions by courts with competent jurisdiction over the same subject matter.



- c. That the subject matter of this suit and in the Environment and Land Court (ELC) ongoing in the High Court is the same in substance.
- d. That the filing of this suit creates a multiplicity of suits.

The Tenant's submissions

- 3. Similarly, summarized, the submissions by the Tenant/Applicant were to the effect;
 - a. That it is not in dispute that the tenant filed in the High Court Suit No. ELC No. E014 of 2023.
 - b. That the issue outstanding in the High Court Suit is the outstanding rent arrears of Kshs. 4,622,800/= and not the status of the tenancy relationship between the parties, and that relationship is that of a protected tenancy.
 - c. That the landlord continued to receive rent even after the lease expired on 6.11.2022 and therefore pursuant to the provisions of Section 57 and 60 of the Land Act No. 6 of 2012, the relationship between the parties was converted into a protected tenancy.

Analysis and determination

- 4. The issue that arises for determination in the Respondent's preliminary objection is whether the instant suit is sub judice ELC No. E014 of 2023 (Kajiado) and therefore an abuse of the court process.
- 5. From the Ruling of the court in Kajiado ELC Case No. E014 of 2023, the tenant herein made an application dated 24th February, 2023 wherein it made the following prayers:
 - a. That this Honourable court do issue temporary injunction against the defendants/ Respondents whether by themselves, their servants, agents and/or any person acting under the instructions from trespassing, entering into the demised premises and taking over the proclaimed properties, evicting or in any other manner interfering with the plaintiff/ Applicant's tenancy pending the hearing and the determination of this suit.
 - b. That the Honourable court be pleased to make such further orders as it may deem just and expedient in the circumstances of this case.
 - c. Costs.
- 6. In its present application dated 21.9.2023, the tenant has sought the following prayers pending the hearing and determination of the reference it has filed:

“That pending the hearing of the reference (main suit) this Honourable court be pleased to grant an order for temporary injunction restraining the Respondents, their servants, employees and/or agents from levying distress for rent, attaching the property of the Applicant/Tenant, threatening, interfering himself, evicting the tenant, closing the suit premises... or in any manner whatsoever interfering with the tenant's quiet occupation and lawful enjoyment of the premises being a Hotel establishment known as Enkare Name Lock Resort situated in Kajiado County.”
- 7. The complaint filed by the tenant is that the landlord instructed the 3rd Respondent to proclaim and attach its property on account of alleged rent arrears without the authority of the Tribunal. The tenant has also requested for the assessment of the fair open market rent payment for the suit premises.



8. Is the tenant's complaint and application as set out hereinabove sub judice having regard to the existence of Kajiado ELC Case No. E014 of 2023 (High Court)?

Section 6 of the Civil Procedure Act, as regards sub judice provides as follows:-

“No court shall proceed with the trial of any suit or proceeding in which, the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

9. The parties in this suit and in the ELC suit filed in Kajiado are the same. The subject matter of the litigation is the same as it concerns a challenge to the recovery of rent by the landlord from the tenant herein. The issues in the instant complaint are directly and substantially in issue in the ELC suit filed by the tenant and which suit is still pending in that court. I do therefore find that this suit is sub judice on account of the pendency of Kajiado ELC Case No. E014 of 2023 (High Court).
10. What then is the fate of this suit which evidently was filed after the Kajiado ELC Case No. E014 of 2023? In the case of; Kenya National Commission on Human Rights vs the Attorney General, IEBC & 16 Others, the Supreme Court of Kenya stated as follows:-

“The term “sub judice” is defined in Black’s Law Dictionary 9th Edition, as, Before the Court or findings for determination.” The purpose of the sub judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the court process and dismiss the chances of courts with competent jurisdiction issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub judice must therefore establish that there is more than one suit over the same subject matter, that one suit was instituted before the other, that both suits are pending before courts of competent jurisdiction and lastly that the suits are between the same parties or their representations.”

11. Consequently, and in line with the above decision of the Supreme Court, I will order that this suit be stayed pending the hearing and determination of Kajiado ELC Case No. E014 of 2023 Enkare Name Lock Resort Limited vs Jane Jepkoeich & 2 Others.

Ruling dated, signed and delivered virtually this 28th day of November 2023.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

PARA 28.

11.2023

In the presence of;

Mr. Wanjohi holding brief for Mr. Anyonka for the Tenant/Applicant

Ms. Kyengo for the Landlord

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