



**Habwe & another v Omutuku; Faida Kwa Jamii (C.B.O) (Proposed Interested Party)  
(Tribunal Case E121 of 2023) [2024] KEBPRT 1677 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1677 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E121 OF 2023  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
NOVEMBER 28, 2024**

**BETWEEN**

**CHRISTOPHER OCHUKA HABWE ..... 1<sup>ST</sup> APPLICANT**

**YAMUKHO AUCTIONEERS ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MOSES OMUTELEMA OMUTUKU ..... RESPONDENT**

**AND**

**FAIDA KWA JAMII (C.B.O) ..... PROPOSED INTERESTED PARTY**

**RULING**

**A. Dispute Background**

1. The landlord served the tenant with a tenancy notice dated 3<sup>rd</sup> May 2023 seeking to terminate the tenant's tenancy with effect from 1<sup>st</sup> August 2023 on the grounds of refusal to pay rent amounting to Kshs 27,000/= as at the date of the notice. He also cited the ground that the tenant erected a permanent structure without his consent.
2. The tenant failed to file a reference in accordance with Section 6(1) of Cap 301 within the required period and the notice took effect on 1<sup>st</sup> August 2023 as expressed therein. The fact of service of the tenancy notice is proved through the affidavit of service sworn by Ferdinand Nyongesa on 12<sup>th</sup> May 2023 while failure by the tenant to file a reference is evidenced by this Tribunal's letter dated 7<sup>th</sup> August 2023.
3. On 12<sup>th</sup> September 2023, this Tribunal ordered the tenant to vacate the suit premises and to pay a sum of Kshs 69,000/= in rent arrears with the OCS Luanda Police Station being directed to assist in enforcement of the eviction notice.



4. Through an application dated 2<sup>nd</sup> September 2023, the tenant moved this Tribunal seeking for stay of execution of the eviction orders and for review and/or setting aside of the said orders stating that he was not a tenant of the Applicant herein and that he did not owe any rent arrears. The application was ordered to be served for hearing inter-partes on 9<sup>th</sup> October 2023.
5. On 9<sup>th</sup> October 2023, this tribunal granted stay of execution of the orders issued on 12<sup>th</sup> September 2023 and hearing of the application was fixed on 7<sup>th</sup> November 2023.
6. By yet another application dated 19<sup>th</sup> December 2023, the tenant moved the Tribunal seeking for an order of injunction against the landlord/applicant and for the release of his goods held by the 2<sup>nd</sup> Applicant/Auctioneer through distress for rent on he basis that the same was effected against the Tribunal's stay orders of 17<sup>th</sup> October 2024.
7. On 21<sup>st</sup> December 2023, this Tribunal issued an order restraining the 2<sup>nd</sup> Respondent/Auctioneer from selling by auction the goods/items seized from the tenant's business premises.
8. The application was responded to through a replying affidavit of landlord sworn on 19<sup>th</sup> January 2024. The application was subsequently disposed of by way of written submissions and ruling thereon was delivered on 28<sup>th</sup> March 2024. Prayer 2 thereof was allowed pending hearing of the application dated 2<sup>nd</sup> September 2023.
9. The application dated 2<sup>nd</sup> September 2023 was subsequently disposed of by way of written submissions and ruling thereon was delivered on 14<sup>th</sup> August 2024 allowing it. The main reference was ordered to proceed by way of viva voce evidence and all the parties were directed to comply with Order 11 of the Civil Procedure Rules.
10. The landlord thereafter filed an application dated 4<sup>th</sup> September 2024 seeking for joinder of Faida Kwa Jamii (C.B.O) to this case as an interested party and an order for the tenant to pay a sum of Kshs 144,000/= in rent arrears up to September 2024. He also sought for reinstatement of the orders of 12<sup>th</sup> September 2023 and for the OCS Luanda Police Station to enforce the orders. He questioned the authenticity of the receipts relied upon by the tenant in proof of payment of rent to Faida Kwa Jamii (C.B.O).
11. The tenant filed grounds of opposition dated 3<sup>rd</sup> October 2024 to the application stating that the application was inter-alia an abuse of court process. It is also the tenant's case that the application had been filed in the wrong forum as this Tribunal has no jurisdiction to enjoin a party for determination of ownership dispute of land.
12. On 8<sup>th</sup> October 2024, both parties were directed to file their respective submissions to the application dated 4<sup>th</sup> September 2024 and the objection to jurisdiction filed by the tenant. Both parties complied with the landlord filing submissions dated 14<sup>th</sup> October 2024 while those of the tenant are dated 18<sup>th</sup> October 2024.

#### **B. Issues for determination**

13. The following are the issues for determination.
  - a. Whether the landlord is entitled to the reliefs sought in the application dated 4<sup>th</sup> September 2024.
  - b. Who shall bear the costs of the case?



**Issue a) Whether the landlord is entitled to the reliefs sought in the application dated 4<sup>th</sup> September 2024.**

14. The landlord filed an application dated 4<sup>th</sup> September 2024 seeking for joinder of Faida Kwa Jamii (C.B.O) to this case as an interested party and an order for the tenant to pay a sum of Kshs 144,000/= in rent arrears up to September 2024. He also sought for reinstatement of the orders of 12<sup>th</sup> September 2023 and for the OCS Luanda Police Station to enforce the orders. He questioned the authenticity of the receipts relied upon by the tenant in proof of payment of rent to Faida Kwa Jamii (C.B.O).
15. The tenant filed grounds of opposition dated 3<sup>rd</sup> October 2024 to the application stating that the application was inter-alia an abuse of court process. It is also the tenant's case that the application had been filed in the wrong forum as this Tribunal has no jurisdiction to enjoin a party for determination of ownership dispute of land.
16. Through his reply dated 26<sup>th</sup> September 2024, to the tenant's objection, the Applicant was able to demonstrate that he has all along been the landlord of the tenant herein. He annexed lease agreements dated 16<sup>th</sup> January 2018 and another one dated 16<sup>th</sup> April 2018 to demonstrate the said fact. He has also attached various rent payment receipts which have not been disputed by the tenant. This in our view proves the landlord/tenant relationship between the original parties herein and there is no need to join Faida Kwa Jamii as a party to the instant proceedings.
17. In regard to prayer 3, the landlord seeks for judgement against the tenant for a sum of Kshs 144,000/= being rent arrears up to September 2024. Instead of demonstrating how he has paid rent up to date, the tenant focuses on the question of jurisdiction of this Tribunal to determine the issue of ownership of the suit premises. In our view, there is no issue of ownership of the suit premises before us that requires to be determined by the Environment and Land Court.
18. The issue herein relates to whether the landlord issued the tenant with a notice to terminate tenancy on account of non-payment of rent and whether the tenant ought to be evicted from the suit premises having failed to refer the matter under Section 6(1) as read with Section 10 of the Landlord and Tenant (Shops, Hotels and Catering Establishments Act) Cap 301, Laws of Kenya.
19. As observed above, we have not seen any evidence from the tenant to rebut the claim by the landlord that he owed a sum of Kshs 144,000/= as at September 2024. There is also no evidence that he filed a reference against the notice to terminate tenancy under Section 6(1) of the said statute.
20. Section 10 of the said Act provides as follows; -

“ 10. Effect of notice where tenant fails to refer to Tribunal, etc.

Where a landlord has served a notice in accordance with the requirements of section 4 of this Act, on a tenant, and the tenant fails within the appropriate time to notify the landlord of his unwillingness to comply with such notice, or to refer the matter to a Tribunal, then subject to section 6 of this Act, such notice shall have effect from the date therein specified to terminate the tenancy, or terminate or alter the terms and conditions, thereof or the rights or services enjoyed thereunder.” (emphasis added)



21. In the case of *Saheb Vs Hassanally* (1981) eKLR, the Court of Appeal analyzed the foregoing legal provision and held as follows;

“In my opinion, it is clear that under the terms of section 10, if a valid notice is not referred, the landlord is entitled to possession without having to prove any of the statutory grounds relied upon in the notice.

To be valid a tenancy notice must comply with the provisions of section 4, including the requirements of the use of the prescribed form, of setting out the statutory grounds for relief and of due service. The learned judge was wrong in this case to investigate the grounds relied upon in the notice, but even then, he should have given judgment for the appellant on the ground that was conceded, namely that the landlord required the occupation of the premises for the purposes of his business (section 7 (1) (g)). The learned judge was in error in not awarding possession of the premises to the appellant in accordance with section 10, without making any inquiry into the validity of the grounds relied upon.” (emphasis added)

22. There being no reference filed by the tenant against the landlord’s tenancy notice dated 3<sup>rd</sup> May 2023, there is no basis for this Tribunal to continue with any further investigation of this dispute and we therefore allow prayers 3,4 and 5 of the application dated 4<sup>th</sup> September 2024.

**Issue (b) Who shall bear the costs of the case?**

23. As regards costs, the same are in this Tribunal’s discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall award costs to the landlord/respondent.

**C. Orders**

24. Given the above analysis, the final orders which commend to us herein are;
- The landlord’s Notice to terminate tenancy dated 3<sup>rd</sup> May 2024 is hereby approved and the tenant’s tenancy in respect to the suit premises is hereby terminated in line with the earlier orders of 12<sup>th</sup> September 2023.
  - The tenant shall forthwith vacate from the suit premises and in default shall be evicted therefrom with the assistance of the 2<sup>nd</sup> Applicant/Auctioneers who shall be accorded security by the OCS, Luanda Police Station.
  - The tenant shall forthwith pay rent arrears amounting to Kshs 144,000/= as at September 2024 together with any further accrued rent and in default, the landlord shall be at liberty to levy distress through the 2<sup>nd</sup> Applicant/Auctioneers without paying further court fees in view of the nature of this case.
  - The tenant shall pay costs of this case assessed at Kshs.25,000/= to the landlord.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28<sup>TH</sup> NOVEMBER 2024**

**HON. GAKUHI CHEGE - PANEL CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON. JOYCE AKINYI OSODO - MEMBER**



In the presence of: -

Landlord in person

No appearance for the tenant

