



**Dhingra t/a SSD Secondary School v Managing Committee of Shree Sanatan Dharam Sabha
Nairobi (Tribunal Case E806 of 2022) [2023] KEBPRT 1206 (KLR) (11 August 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 1206 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E806 OF 2022
P MAY, MEMBER
AUGUST 11, 2023**

BETWEEN

RAMESH C DHINGRA T/A SSD SECONDARY SCHOOL APPLICANT

AND

**MANAGING COMMITTEE OF SHREE SANATAN DHARAM SABHA
NAIROBI RESPONDENT**

JUDGMENT

1. The present proceedings were triggered by the notice of termination of tenancy issued by the respondent dated 25/7/2022. The applicant was opposed the said notice and expressed their unwillingness to comply with the same *vide* the letter dated 16th August, 2022. The tenant filed the present reference dated 5/9/2022 pursuant to section 6 of Cap 301 to challenge the said notice before the Tribunal.
2. The parties filed the relevant witness statements and the attendant accompanying documents in support of their positions. The reference was fixed for hearing whereby each of the parties called their witnesses to testify. At the close of the hearing, the parties elected to file written submissions. There has been compliance by both parties. I have considered the said submissions, the evidence on record and would proceed as follows:
3. The parties have differed diametrically on the nature of relationship that exists between them. From the onset the applicant stated categorically that their main intention of approaching the Tribunal was to challenge the jurisdiction of the Tribunal with regards to the notice that was issued. The respondent however maintains that the Tribunal is vested with the jurisdiction to hear and determine the present dispute as the relationship between the parties fell within controlled tenancy as defined under section 2 of Cap 301.



4. The applicant further challenged the jurisdiction of the Tribunal owing to the active cases/ complaints involving the same parties before other dispute resolution fora to wit the Magistrates Court and the Registrar of Societies. The applicant implied that by dealing with the present dispute, the Tribunal would be acting in contravention of the doctrine of *sub judice*.
5. It is trite law that where questions of jurisdiction are raised, the Tribunal has a duty to address the same at the earliest instance before delving into the merits of the case. The core question is whether the instant proceedings offend the doctrine of sub judice. A useful starting point is section 5 of the [Civil Procedure Act](#) which provides that any court shall, subject to the provisions herein contained, have jurisdiction to try all suits of a civil nature excepting suits of which its cognizance is either expressly or impliedly barred. The operative words in this provision are “expressly” or “impliedly barred.”
6. The concept of sub judice that where an issue is pending in a court of law for adjudication between the same parties, any other court is barred from trying that issue so long as the first suit goes on. In such a situation, order is passed by the subsequent court to stay the proceeding and such order can be made at any stage.
7. The Supreme Court of Kenya in [Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others \(Interested Parties\)](#) had occasion to pronounce itself on the subject of sub judice. It aptly stated: -

(67) The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as:

“Before the Court or Judge 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 diminish 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 representatives.

8. The Tribunal has been informed of the existing active complaints and cases. The same involve the same parties as they are in the present dispute. The orders sought as per the documents filed in the present proceedings clearly point to the same having a bearing on the present proceedings. There is a great risk of the parties getting conflicting decisions from the different fora that they are litigating under. This will not only cause a great embarrassment to the justice system but also set in motion a litany of application which can be averted.
9. It is prudent to restate that it is not lost to us that the Tribunal forms part of the subordinate courts under our constitution, just like the Magistrates Courts. The jurisdiction of the Tribunal however is limited to disputes emanating from controlled tenancy. The dispute before the fora mentioned above will determine the nature of relationship between the parties thus will give a compass on whether the truly exist a landlord tenant relationship between the parties herein.
10. In view of the foregoing, I will borrow and apply the doctrine of avoidance which has been devised by our constitutional courts to deal with the situations as the one that this Tribunal finds itself in. What



the doctrine means is that while this Tribunal may indeed determine the matter, it restrains itself from making a determination on the same because there exists another appropriate forum that can hear and determine the matter effectively.

10. Having made the above finding, I shall respectively down my tools. The parties are at liberty to move the Tribunal once the aforementioned cases are conclusively determined.

JUDGMENT DATED, SIGNED AND DELIVERED THIS 11TH DAY OF AUGUST 2023

HON. P. MAY

MEMBER

11.8.2023

In the presence of;

Ongachu for the Tenant/Applicant

Ms. Murigi for the landlord/Respondent

