



**Master Sound and Electronics Limited v Karrim Bhanji & Julius Marita t/a Etipo Agencies & another (Tribunal Case E145 of 2024) [2024] KEBPRT 1052 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1052 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E145 OF 2024  
CN MUGAMBI, CHAIR  
JULY 24, 2024**

**BETWEEN**

**MASTER SOUND AND ELECTRONICS LIMITED ..... APPLICANT**

**AND**

**KARRIM BHANJI & JULIUS MARITA T/A ETIPO  
AGENCIES ..... 1<sup>ST</sup> RESPONDENT**

**LITTLE VINEYARDS AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. The Tenant's Application dated 05.2.2024 seeks the following orders;-
  - a. That the Landlord and the 2<sup>nd</sup> Respondent be restrained from attaching for sale the Tenant's properties enumerated in the proclamation notice served upon the Tenant/Applicant on 25.01.2024.
  - b. That the Landlord be ordered to tender the rent book in respect of the controlled tenancy.
  - c. That an inspection/valuation be conducted and a report be filed in court within a period of seven days from the date of such inspection.
  - d. That the Landlord be compelled to refund the amount of Kshs. 373,700/= being the costs incurred by the Tenant for the repairs done on the leaking roof and sewerage system.
  - e. That the Landlord be compelled to refund the amount of Kshs. 1,666,300/= being the costs of damaged goods as a result of the sewerage spillage.



### **The Tenant's depositions**

2. The Affidavit of Mary Nyokabi Mburu, the sole director of the Applicant/Tenant may be summarized as hereunder;-
  - a. That the Tenant is the lawful occupant of the demised premises situated upon Land parcel No. 209/697/45 shop/Stall 1 Ground Floor, Kamae lane, Luthuli Avenue.
  - b. That upon preparation of a lease agreement in the year 2015, the Landlord took it allegedly for stamping by his Advocates but never shared the same with the Tenant.
  - c. That the Tenant has been paying the rent of Kshs. 50,000/= but the Landlord refused to furnish the Tenant with the rent receipts.
  - d. That during the Covid 19 period, the rent was mutually reduced to Kshs. 30,000/= in order to cushion the Tenant.
  - e. That during the month of August, 2020, the sewerage line began leaking through the roof and walls of the demised premises damaging assorted electronics as shown in the inventory dated 13.8.2020.
  - f. That the Tenant repaired the premises at a cost of Kshs. 81,600/=.
  - g. That in the years 2021 and 2023, the leakage occurred again forcing the Tenant to once again undertake repairs as per the inventories dated 16.08.2021 and 09.9.2023.
  - h. That the Landlord has unilaterally ordered the Tenant to pay an increased rent of Kshs. 55,000/= which is a sharp increased.
  - i. That the Tenant did a letter dated 23.01.2024 demanding compensation amounting to Kshs. 2,040,000/= which elicited a harsh response from the Landlord.
  - j. That the Landlord has instructed the 2<sup>nd</sup> Respondent to levy distress against the Tenant in a bid to take over the demised and renovated premises.
  - k. That the Tenant is prepared to deposit into court the outstanding arrears of Kshs. 120,000/= for the months of October to December 2023 and January 2024.
  - l. That the alleged outstanding rent of Kshs. 2,037,000/= is a fabrication and the Landlord should be ordered to produce rent payment records including a rent book.
  - m. That the increase of rent from Kshs. 30,000/= to Kshs. 55,000/= is unprocedural and unlawful.

### **The Respondent's depositions**

3. The Affidavit of Mr. Edward Julius Marita the proprietor of the 2<sup>nd</sup> Respondent and also sworn on behalf of the 1<sup>st</sup> Respondent may be summarized as follows;-
  - a. That the Tenant known as Mary Mburu occupies premises on L.R. No. 209/2419 and not 209/697/45 which pertains to a different building.
  - b. That the tenancy to the above premises is not a controlled tenancy as the sublease agreement dated 1.04.2020 was for a term of five (5) years three months from 1.04.2020 to 6.06.2025 and the lease agreement does not contain a provision for termination during the term of the lease.



- c. That the sublease provides in all cases the rent amount clear of all deductions payable on or before the 5<sup>th</sup> day of each month with an escalation clause of 7% per annum.
- d. That the Tenant was not to sublet, transfer or otherwise part with possession of the suit premises without the written consent of the Landlord.
- e. Disputes arising from the interpretation of clause 7(9) of the sublease agreement were to be referred to arbitration.
- f. That the Landlord is a stranger to the alleged damages to the tenancy goods and repair works on the suit premises as the Landlord is only guided by the terms of the sublease agreement between the parties.
- g. That the Tenant does not dispute that she is in rent arrears.
- h. That this Tribunal has no jurisdiction to hear and determine this dispute.
- i. That the monthly rent is as set out in the sublease agreement and also as per the schedule of rent arrears annexed to the Landlord's affidavit and marked as "JM4".
- j. That as at January 2024, the Tenant owed rent arrears in the sum of Kshs. 2,016,467/= which prompted the Landlord to instruct auctioneers to levy distress for recovery of the same.
- k. That the Landlord is entitled to levy distress for rent arrears owed, and the auctioneer acted within the relevant laws in so doing.
- l. That the rent for the suit premises has always been paid by one Mary Nyokabi Mburu who has not been remitting the monthly rent as agreed. The balances of the annual rents payable are as stipulated in the Landlord's replying affidavit at paragraph 18 thereof.
- m. That the Tenant herein is not known to the Landlord and is a stranger to the sublease agreement in place as the Tenant in the said sublease is one Mary N. Mburu.
- n. That the deponent of the affidavit sworn on 5.02.2024 has not denied executing a lease agreement.
- o. That the Landlord is not aware of any arrangement to reduce the rent from Kshs. 50,000/= to Kshs. 30,000/= during the Covid 19 pandemic and firmly depones that rent is payable as per the sublease agreement.
- p. That the Landlord is not aware of any sewerage spillage and nor has the Tenant written to the Landlord in connection with any such spillage resulting to destruction or damages of any goods in the demised premises.
- q. That as at 24.01.2024, the Tenant owed the Landlord rent in the sum of Kshs. 2,037,000/=.
- r. That the inventories produced by the Applicant are not ascertainable and/or verifiable.

#### **Analysis and determination**

4. The issues that arise for determination in this Application are the following:-
  - a. Whether the Applicant is a tenant of the 1<sup>st</sup> Respondent and whether therefore the Tribunal has the jurisdiction to hear and determine this matter?
  - b. Whether the Applicant is entitled to the orders sought in its Application.



**Issue A: Whether the Applicant is a tenant of the 1<sup>st</sup> Respondent and whether therefore the Tribunal has the jurisdiction to hear and determine this matter?**

5. The Tenant has deponed in its Affidavit that it is the lawful occupant of the suit premises and started off with a monthly rent payment of Kshs. 50,000/= which was reduced to Kshs. 30,000/= during the Covid pandemic. The Landlord has deponed in his affidavit that he is a stranger to the Applicant and the only Tenant he recognizes is one Ms. Mary N. Mburu who has a sublease agreement with the 1<sup>st</sup> Respondent which does not amount to a controlled tenancy.
6. From the letters annexed to the Applicants' affidavit, I do note that on 24.01.2024, a demand letter for compensation was written by Counsel for the Applicant to the Respondents. In this letter, Counsel for the Applicant states that the Applicant has informed them that it is a Tenant of the Respondent. By the letter dated 26.01.2024, Counsel for the Respondent categorically denied that the Applicant is a Tenant of the 1<sup>st</sup> Respondent. At paragraph 2 of the said letter, it is stated;

“That our clients are strangers to the allegations, contents and/or averments of your letter dated 24.01.2024 as they have no legal tenancy/lease/contract/agreement with you client. Our clients further advise that if anything, your clients lease agreement is with a different entity which facts your client is well aware of.”

7. Further, from the documents annexed to the affidavit of the Applicant, it is clear that the rent was paid by one Mary Nyokabi Mburu (see the Mpesa statements). I have perused all the documents filed by the Applicant and none establishes any tenancy relationship between it and the 1<sup>st</sup> Respondent. The closest the Applicant has come is in the Reference filed by Ms. Mary Nyokabi Mburu where she describes herself as the director of the Applicant. The Applicant by its own description is a limited liability Company and therefore a distinct entity from the said Mary Nyokabi Mburu. The deposition in the Applicant's Affidavit by Ms. Mary Nyokabi Mburu that she is the sole director of the Applicant and the Reference filed does not in the absence of any other evidence qualify the Applicant to be a Tenant of the 1<sup>st</sup> Respondent.
8. The Respondents have stated that the Tenant they recognize is one Mary N. Mburu who has a tenancy agreement for period of five (5) years and three months. The said lease agreement does not contain a provision for termination other than for breach of contract and is therefore beyond the jurisdiction of the Tribunal. The lease agreement alluded to by the Respondents has been annexed in their affidavit and is marked as “JM3”. It is true that the same is for a period of five years and three months and the lease agreement is between the 2<sup>nd</sup> Respondent and one Ms. Mary N. Mburu. The Applicant, who from the contents of the Respondents exhibit “JM2” is a limited liability company is not a party to the said agreement.
9. The Respondents have not made any rent demands to the Applicant and the Respondents exhibit “JM2”, a rent invoice and the accompanying rent statements are addressed to one Mary N. Mburu. The letter of instruction to the auctioneers to levy distress for rent (exhibit “JM5”) is also addressed to be executed against Ms. Mary Mburu. I have seen the proclamation by the auctioneers and it also recognizes Ms. Mary Mburu (of shop stall 1) as the Tenant against whom the levy of distress was directed.

The Mpesa statement is also that of Ms. Mary Nyokabi Mburu. In all these documents, the Applicant does not appear anywhere as either being the Tenant of the Respondents, paying rent or having any lease agreement with the 1<sup>st</sup> Respondent.



10. It is my finding therefore that the Applicant has not demonstrated that there exists a Landlord/Tenant relationship between it and the 1<sup>st</sup> Respondent and that being the case, the Tribunal has no jurisdiction to hear and determine this dispute.

In the case of; *Pritam vs Ratilal & Another*, [1972] EA 560, the court held as follows:-

“As stated in the landlord and Tenants (shops, Hotels and catering establishments) Act, itself, it is an act of Parliament to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto. The scheme of this legislation is to provide extra and special protection for tenants. A special class of tenants is created. Therefore the existence of the relationship of landlord and tenant is a pre-requisite to the application of the Act and where such relationship does not exist or it has come to or been brought to an end, the provisions of the Act will not apply. The applicability of the Act is a condition precedent to the exercise of jurisdiction by a tribunal otherwise, the tribunal will have no jurisdiction. There must be a controlled tenancy as defined in Section 2 to which the provisions of the Act can be made to apply. Outside it, the Tribunal has no jurisdiction.”

**Issue B: Whether the Applicant is entitled to the orders sought in its Application**

11. Having already found that the Tribunal has no jurisdiction to hear and determine the matter, the Tribunal cannot take any extra step in the matter and is required by law and precedent to lay down its tools.
12. Consequently, the Application and the Reference filed by the Applicant are dismissed with costs to the Respondents.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24<sup>TH</sup> DAY OF JULY, 2024.**

**HON. CYPRIAN MUGAMBI - CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of;

Ms. Mugalla holding brief for Ndegwa for the Agent and the Landlord

Mr. Waweru holding brief for Mr. Juma for the Tenant/Applicant

