



REPUBLIC OF KENYA



**Mafunya v Pere & another (Tribunal Case E347 of 2023)
[2023] KEBPRT 1317 (KLR) (12 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1317 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E347 OF 2023
CN MUGAMBI, CHAIR
SEPTEMBER 12, 2023**

BETWEEN

REGAN MAFUNYA TENANT

AND

MEPUKORI PERE 1ST RESPONDENT

VALLEY AUCTIONEERS 2ND RESPONDENT

RULING

Introduction

1. The tenant's application dated 3.4.2023 seeks orders that the Tribunal be pleased to grant an injunction restraining the Respondents from in any manner whatsoever interfering with the tenant's/Applicant's shops/stalls situated at Rongai, within Kajiado County. The Applicant has sought the assistance of the OCS Ongata Rongai police station in the compliance of the orders sought.

The Tenant's depositions

2. The affidavit in support of the application sworn by the Applicant may be summarized as follows:-
 - a. That he is the head tenant/Applicant and has been authorized by the other tenants to swear this affidavit.
 - b. That the tenants have fully complied with their terms of tenancy with the landlord/Respondent and the tenants have made advance payments to the landlord amounting to Kshs. 1,400,000/= in disregard of which the 2nd Respondent has proclaimed the tenants properties.
 - c. That the tenants have trading licenses issued by the County Government of Kajiado.



- d. That the tenants have learnt that the landlord now wants to evict them from the suit premises and replace them with new tenants and the tenants have reported the matter to the Rongai police station where no action has been taken.

The 1st Respondent's/landlord's replying affidavit

3. The Replying affidavit by Mepukori Pere sworn on 15.5.2023 may be summarized as follows:-
 - a. That the Applicant who purports to be the head tenant has failed to annex the lease agreement between the parties nor the terms of the said lease or the area occupied under the said lease, the rent payable or to whom it is paid.
 - b. That the landlord believes that the instant suit is filed through proxy by one Samuel Gicheru to frustrate the execution of the decree in Kajiado ELCC No. 572 of 2017, Mepukori Pere v Samuel Gicheru & Endolvine Investment Ltd where an order of eviction was issued against the defendants.
 - c. That other suits in respect of the suit property filed in the Tribunal are: Case Nos. E200 of 2023, E12 of 2021, 185 of 2021
 - d. That the instant case is a copy paste of Case No. E200 of 2023 which was dismissed.
 - e. That the exparte orders issued by Hon. Murigi have not been served upon the Respondents within the required three days and are therefore a nullity ab initio.

The Tenant's further affidavit

4. The further affidavit sworn by Reagan Mafunya on 29.5.2023 may be summarized as follows hereunder:-
 - a. That they entered into a tenancy agreement with Soko Safi and Endolvine Company Limited.
 - b. That the tenants have always paid their rent without fail.
 - c. That the Applicants are strangers to the suits referred to in paragraph 4 and 5 of the landlord's replying affidavit.
 - d. That the parties referred to in the said suit are different from the parties in the instant suit.
 - e. That case No. Kajiado ELCC No. 572 of 2017 does not concern the Applicants as it is a land matter while the current suit involves business premises.
 - f. That all the parties mentioned in the replying affidavit are strangers to the Applicants and the applicants have not had any dealings with them.

Analysis and determination

5. The issues that arise for determination in this application are the following:-
 - a. Whether the Tribunal has the jurisdiction to hear and determine this matter?
 - b. And if yes, whether Case Nos (BPRT) E200/2023, 12 of 2021 and 185/2021 and Kajiado ELCC No. 572 of 2017 have any material connection and effect on this suit.
 - c. Whether the tenant/Applicant is entitled to the orders sought in his application.



Issue A

6. The Applicant herein has described himself as the head tenant in the suit premises and that he has been authorized by the other tenants to swear the affidavit. I have perused the documents filed by the Applicant and they do not disclose the so-called other tenants and neither has the Applicant annexed to his affidavit the authority to plead on behalf of the yet to be disclosed tenants. The tenant has also not particularized the suit premises other than generally stating that they are shops at Rongai within Kajiado County. I am not therefore able to tell which other tenants the Applicants represents nor also tell the suit premises being litigated upon with any certainty.

It is the duty of the Applicant to bring these matters to the fore especially now that the Respondent has alluded to other matters in the Tribunal and the High Court.

7. The Applicant at paragraph 2 of his supporting affidavit depones that they are of the Respondent in the suit premises. At paragraph 5 thereof, the Applicant states that they have fully paid their rent to the landlord. In a different twist of deposition, the tenant at paragraph 3 of his further affidavit states as follows:-

“That we entered into a tenancy agreement with the Soko Safi and Endolvine Company Ltd and let us (tenants) in order to run our business (sic)”

8. The question that then begs an answer is, is the Applicant and the alleged other tenants, tenants of the 1st Respondent?.

In answer to this question, the tenant in his submissions at paragraph 1, page 2 has stated/submitted;

“our landlord is Endolvine Ltd and Soko Safi where we submit rent and are not parties to this suit.”

At paragraph 3 of the tenant’s submissions at page 2 thereof, the tenant further submits;

“The 1st Respondent although denies the relationship between them and the Applicant, the 1st Respondent has no authority to evict the Applicants and should follow the righty procedure through the right court. We therefore state that the 1st Respondent has no mandate to attach the properties of the tenants herein as he is a stranger to us.”

9. It therefore beats logic, why the tenant would sue a party he clearly does not recognize as his landlord in the Tribunal. It is trite law that for the tribunal to be clothed with jurisdiction, the existence of a tenant/landlord relationship is a pre-requisite to the application of the Act. Where such relationship has ended or has been brought to an end or does not exist, then the Tribunal has no jurisdiction to hear and determine the matter. The tenant has clearly stated that the Respondent herein is a stranger to them and the only party he recognizes as his landlords are Endolvine Limited and Soko Safi Limited who are not parties to this case. On this account, I do therefore hold that, there being admittedly no landlord/tenant relationship between the parties herein, the Tribunal has no jurisdiction to hear and determine this matter.
10. I have read the replying affidavit of the 1st Respondent and the decree annexed as exhibit No MP-1 declaring the 1st Respondent as the owner of Land parcel No Ngong/Ngong/57649 and further decrees that the defendants be evicted from the said land amongst other orders. One of the defendants in the said suit is Endolvine Investment Ltd (2nd defendant). This is the same entity the Applicant recognizes as his landlord and to whom the tenant depones that he has been paying rent. The tenant



having failed to disclose the particulars of the suit premises in terms of its registration, it is not possible to tell whether the suit land is the same one referred to in the decree annexed by the landlord in his replying affidavit. Nevertheless, on the strength of the depositions in the landlord's affidavit and particularly at paragraphs 4, 8 and 9 thereof, I am convinced in the absence of any contradiction, that the suit land in Case No.Kajiado ELCC No 572 of 2017 and the suit premises herein are one and the same.

11. The tenant's failure to disclose the names of the persons he calls the other tenants and specific particulars of the suit premises, are highly suspect and in my view, meant to confuse the tribunal in ascertaining the real facts on the ground.

Issue C

12. In the circumstances and in view of the foregoing findings, I do not think the tenant has established a *prima facie* case, I find no merits in his application and the same is hereby dismissed with costs to the landlord/1st Respondent.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF SEPTEMBER 2023

HON. CYPRIAN MUGAMBI -CHAIRPERSON

12. 9.2023

In the absence of the parties

