



REPUBLIC OF KENYA



**Mwangi v Kuria t/a Waciru Commercial and Property Agencies (Tribunal  
Case 34 of 2021) [2023] KEBPRT 40 (KLR) (Civ) (11 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 40 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE 34 OF 2021  
GAKUHI CHEGE, VICE CHAIR  
JANUARY 11, 2023**

**BETWEEN**

**JAMES MWANGI ..... APPLICANT**

**AND**

**ISAAC KURIA T/A WACIRU COMMERCIAL AND PROPERTY  
AGENCIES ..... RESPONDENT**

**RULING**

1. Before me is an application dated June 27, 2022 in which the tenant seeks in pertinent part for review, stay and setting aside of the tribunal orders of May 27, 2022.
2. The application is supported by the affidavit of the tenant wherein it is deposed that there is an error apparent on the face of record as the relationship between him and the landlord/respondent ceased to exist on September 30, 2021.
3. According to the applicant, the premises in which the shop is situated is owned by the interested party who is the administrator of the estate of Peter Muraya Chege (deceased) in terms of annexure "JM3" being letters of administration thereof.
4. The landlord/respondent had leased the entire premises in which the applicant's shop is situate from the interested party for a period of 2 years commencing on August 5, 2019 to September 5, 2021 as per annexure marked 'JM4' being the lease agreement. He thereafter sublet the shop to the applicant at a monthly rent of Kshs 50,000/-.
5. It is deposed that this suit was instituted on or about March 2021 against the respondent when the said shop was still under his control.



6. Upon expiry of the lease agreement entered between the respondent and interested party, the latter took over control of the premises and has since been collecting rent ever since according to the applicant.
7. The interested party wrote a letter dated November 1, 2021 marked as annexure 'JM5' warning the applicant *inter-alia* against paying rent to the respondent. The applicant deposes that he has since then been paying rent to the interested party as per annexure marked "JM6".
8. It is thus deposed that the landlord/tenant relationship ceased to exist on October 1, 2021 after the interested party took control of the premises and that the honourable tribunal did not take the said fact into consideration in the ruling of May 27, 2022.
9. As such, the only rent that should have been ruled upon was that which was owing as at September 30, 2021 when the landlord/tenant relationship ceased to exist.
10. Although the respondent's counsel had indicated on September 12, 2022 that he would file a response to the application within 7 days together with a notice of appointment of advocates, none was filed.
11. Equally, the interested party had on November 10, 2022 indicated that he would file documents and was granted leave to do so within 7 days thereof, none were filed. Parties did not also file submissions in the matter as directed on November 10, 2022.
12. I am therefore required to determine the following issues:-
  - a. Whether the tenant/applicant is entitled to the reliefs sought in prayer 5 of the application dated June 27, 2022.
  - b. Who is liable to pay costs of the application?.
13. The applicant contends that the rent payable in respect of the suit premises ought to have been applied up to and including September 30, 2021 when the lease agreement of the landlord expired. This is one of the issues raised in the tenant's affidavit of March 20, 2022 filed herein at paragraph 6 thereof.
14. At the time the ruling sought to be reviewed was delivered, there was no evidence of the tenancy agreement entered into between the landlord and the estate of Peter Muraya Chege (deceased) and neither was the letter marked 'JM5' exhibited. This is what informed the holding that the tenant was required to continue paying rent to the landlord after October 2021 even when the lease had expired with the estate of Peter Muraya Chege (deceased) administrators.
15. Having seen the said tenancy agreement marked 'JM4' and there being no response to the application by the landlord to the instant application, I have reason to believe that the tenant was entitled to stop paying rent to the landlord after October 1, 2021.
16. In the premises, the amount of rent arrears is reduced by a sum of Kshs 400,000/- being rent for 8 months between October 2021 and May 2022 set out in paragraph 4 of the ruling dated May 27, 2022 to leave the balance of arrears owing at Kshs 70,000/- only and costs of Kshs 30,000/- earlier awarded to make altogether Kshs 100,000/- as the amount owing to the landlord.
17. As regards costs of the application herein, the same are in this tribunal's discretion under section 12(1) (k) of [cap 301](#), Laws of Kenya. The tenant ought to have exercised due diligence to avail the documents attached to his application before the impugned ruling was delivered. He is thus not entitled to any costs thereon.
18. In conclusion, the final orders which commend to me in this matter are:-



- a. The ruling of May 27, 2022 is reviewed or varied with the amount of rent arrears owing by the tenant to the landlord being reduced to Kshs 70,000/-.
- b. The earlier award of costs in the sum of Kshs 30,000/- in favour of the landlord is upheld.

It is so ordered

**RULING DATED, SIGNED & DELIVERED THIS 11<sup>TH</sup> DAY OF JANUARY 2023.**

**HON. GAKUHI CHEGE**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

Ruling delivered in the absence of the parties.

