



**Muiruri v Kamau & 2 others (Tribunal Case 445 of 2019)  
[2023] KEBPRT 464 (KLR) (21 August 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 464 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE 445 OF 2019  
P MAY, VICE CHAIR  
AUGUST 21, 2023**

**BETWEEN**

**PATRICK NJUGUNA MUIRURI ..... TENANT**

**AND**

**MOSES MURATHA KAMAU ..... 1<sup>ST</sup> RESPONDENT**

**MARGARET WAMBUI ..... 2<sup>ND</sup> RESPONDENT**

**PROMAST ENTERPRISES LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The present proceedings commenced vide the tenant's reference dated May 7, 2019. The tenant stated in the reference that they were aggrieved by the actions of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents who were demanding rent and threatening eviction yet he was given possession of the 1<sup>st</sup> Respondent who had also been collecting rent from them. Contemporaneously with the reference, the tenant filed an application under certificate dated on an even date seeking orders of temporary injunction against the said 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
2. The parties have previously filed interlocutory applications within the proceedings. The hearing of the reference was stalled until May 22, 2023 when the parties finally proceeded for hearing. Each party called witnesses who testified in their favour. At the close of the hearing, the parties opted to file written submissions.
3. I have considered the pleadings on record, the voluminous bundle of documents filed, the witness statements and the submissions filed and would proceed as follows:
4. A reading of the pleadings clearly reveals that there are two sides in this case. On one faction is the tenant and the 1<sup>st</sup> Respondent and on the other the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. I will summarize each party's case hereunder:



5. The tenant states that they had been occupation of the demised premises and that they had been paying rent to the 1<sup>st</sup> Respondent whom they have known to be the landlord. They however later received communication demanding that they pay rent to the 3<sup>rd</sup> Respondent. He failed to heed to this communication as it was conflicting with his contractual obligations giving rise to the threats of eviction. This precipitated the filing of the present reference. The 1<sup>st</sup> Respondent gave a similar account only that they insisted that they were the legitimate owners of the demised premises.
6. The 2<sup>nd</sup> Respondent stated that they were related to the 1<sup>st</sup> Respondent and belonged to the same family. It was her testimony that the demised property formed part of the estate of the deceased and as a family they had initiated succession proceedings. They had however during the pendency of the said probate proceedings appointed the 3<sup>rd</sup> Respondent to collect rent.
7. In the instant dispute the protagonists have contested who the actual landlord is. The jurisdiction of the Tribunal can only be exercised upon proof of existence of landlord and tenant relationship. I am guided by the decision in [\*Republic – vs- Chairperson, Business Premises Rent Tribunal at Nairobi & Another ex-parte Suraj Housing & Properties Limited & 2 others\*](#) [2016] eKLR the court cited with approval the decision in [\*Pritam – vs- Ratilal and another\*](#) (1972) EA 560 as follows:-

“As stated in the [\*Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act\*](#) itself, it is an Act of Parliament to make provision with respect premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected there with and incidental thereto. The scheme of this special 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”. (Emphasis added).

8. The 1<sup>st</sup> Respondent stated that they owned the demised premises. He was not a caretaker as alluded to by the 2<sup>nd</sup> Respondent. He relied on the tenancy agreement to support this proposition.
9. Under section 109 of the [\*Evidence Act\*](#), Cap. 80, Laws of Kenya:-

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person”.

Section 107(1) of the same [\*Act\*](#) provides that:-

“(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”.

10. The 2<sup>nd</sup> respondent tendered a number of documentations to rebut the assertions by the 1<sup>st</sup> Respondent and tenant including minutes of a meeting at the Office of the ACC. The said documents in my view gave overwhelming evidence that the demised premises formed part of the estate of Isaac Kamau Njuguna thus the parties had regularly appointed the 3<sup>rd</sup> Respondent to collect rent.



11. Having made the above findings, it is clear that the reference has failed on this ambit. I am aware that the parties have filed other proceedings including at the family court which have a bearing on the management of the demised premises. In the interim therefore, I would order that the tenant forthwith pays the agreed rent through the 3<sup>rd</sup> Respondent unless the arrangement is varied by the parties or through a court order. In the end, the reference is dismissed with no orders as to costs.

**JUDGMENT DELIVERED VIRTUALLY THIS 21<sup>ST</sup> DAY OF AUGUST, 2023**

**HON. P. MAY**

**VICE CHAIR**

