



**Mohamed & another v Debebe & another (Tribunal Case
E946 of 2022) [2023] KEBPRT 1329 (KLR) (2 March 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1329 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E946 OF 2022
CN MUGAMBI, CHAIR
MARCH 2, 2023**

BETWEEN

HUSSEIN IBRAHIM MOHAMED 1ST APPLICANT

ABDALLA HUSSEIN IBRAHIM 2ND APPLICANT

AND

ZAINABESHI HASSAN DEBEBE 1ST RESPONDENT

ABDI SHARIFF MOHAMED 2ND RESPONDENT

RULING

Introduction

1. The notice of preliminary objection by the Respondents dated 10th November 2022 is brought on the following grounds:-
 - a. That this Honourable Tribunal lacks jurisdiction to hear and determinate this matter for lack of a landlord/tenancy relationship and also for purporting to litigate on ownership of the property.
 - b. That there is no suit before the Tribunal worth determination.
 - c. That the Applicants matter before the court offends the sub-judice principle due to existence of ELC No. 120 of 2020 (*Zainabesh Hassan Debebe v Hussein Ibrahim Mohammed and DIB Bank Ltd*) and CMCC No. E4713 of 2022 (*Zainabesh Hasan Debebe vs Hussein Ibrahim Mohammed and 2 Others*).
 - d. That the Applicants matter before the Tribunal is scandalous, vexatious and an abuse of the court process and should be dismissed in limine with costs.



The Respondent's Submissions

2. The Respondents have at paragraph 4 of their submissions set out the facts surrounding this dispute which can be briefly stated to be as follows:-
 - a. That the Applicants have alleged in their motion that the 1st Respondent has refused to pay rent and that the Applicants family lives in the residence with an ailing wife.
 - b. That as seen from the pleadings in court, the 1st Respondent was previously a tenant of the 1st Applicant before the suit property was bought by the 2nd Respondent in a public auction. In support of this sale, the Respondents refer the Tribunal to the annexures in the replying affidavit by the 2nd Respondent.
 - c. That the 2nd Respondent as the new legal owner of the suit premises, has entered into an agreement with the 1st Respondent with respect to the suit premises.
 - d. That case No. CMCC E4713/2022 touching on the tenancy of the 1st Respondent is still pending in court and that the Applicants have not further disclosed the existence of Nairobi ELC 120 of 2020 and CMCC No. E4713 of 2022 all touching on the same subject matter the subject suit property and therefore the matter contravenes the sub-judice rule.
3. It is the Respondent's submissions that the Applicants have not established any landlord/tenant relationship between themselves and the Respondents and in the absence of that relationship, the Tribunal does not have the jurisdiction to hear and determine this matter.
4. The Respondent's further submit that the Applicants application is not founded on any reference and it cannot therefore stand alone. In the circumstances, there is no suit before the Tribunal.
5. The Respondents have also submitted that this suit is sub-judice as ELC No. 120 of 2020 and CMCC No. E4713 of 2022 which are suits over the same subject matter are still pending in court and the parties in those suits and in the instant suit are the same.
6. The Respondents finally have submitted that the Applicants suit is frivolous and an abuse of the court process and does not further the overriding objectives on efficient and effective administration of justice.

The Applicant's submissions

7. The Applicants while referring the court to annexure No. 2 of the supporting affidavit, submits that the notion that there is no landlord/tenant relationship is far-fetched.
8. The Applicant has further submitted that a preliminary objection is one which touches on jurisdiction and is based on a point of law that does not require the judicial body to delve into the facts of the case.
9. It is the Applicant's further submissions that in order to prove sub-judice certain facts have to be proved such as whether the parties are the same, whether the parties are litigating on their behalf and whether the subject matter is the same.

Analysis and determination

10. The Respondents have challenged the jurisdiction of the Tribunal on the basis that the tenant/Applicant's application is not founded on any reference and that this matter is sub-judice as there exists case No. ELC No. 120 of 2020 and CMCC No. 4713 of 2022 all touching on the same subject matter. The Respondents have also stated that there does not exist a landlord-tenant relationship between the



Applicants and the Respondents and consequently, the Tribunal lacks jurisdiction to entertain this dispute.

11. The *landlord and tenant (shops, hotels and catering establishments) Act* Cap 301 provides for two principal avenues for instituting proceedings before the Tribunal.

Under Section 6 of the *Act*, a party who wishes to oppose a tenancy notice does so by filing a reference to the Tribunal.

Under Section 12(4) of the *Act*, it is provided,

“In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant and may make such order therein as it deems fit.”

Proceedings under Section 12(4) are therefore instituted by a complaint made to the Tribunal by the landlord or the tenant.

12. The notice of motion by the Applicants in the main seeks orders of temporary injunction against the Respondents pending the hearing and determination of this suit. It is the Respondents contention that there is no suit the basis of which this prayer would be made. I have perused the court file and I have not found the “suit” which would be pending for determination once this application has been dealt with.

The Applicants have not approached the Tribunal in any of the ways recognized under Section 6 or Section 12(4) of *Cap 301*. Simply put, there is no reference upon which the orders sought would be granted. The notice of motion application dated 19.10.2022 does not and cannot amount to a reference under Section 6 or a complaint under Section 12(4) of the *Act*.

13. The Applicants have sought prayers that the Respondents be enjoined from demolishing, proclaiming, attaching, selling, alienating and disposing the property on title Number Nairobi Block 104/389 pending the hearing of the suit. The grounds upon which the application is brought only states that the 1st Respondent is not willing to pay any rent arrears to the Applicant. Similarly, the supporting affidavit only refers to the 1st Respondent.

I have noticed also that in the certificate of urgency, the Applicants have stated that the 1st and 2nd Respondents have prepared fake title deeds in order to evict the 1st and 2nd Applicants from their property. On the other hand, the 2nd Respondent states that he is the registered proprietor of the suit land having purchased the same in a public auction and that the 1st Respondent is his tenant.

14. In order to establish whether the 1st Applicant is the landlord of the 1st Respondent and or whether the 2nd Respondent is the landlord of the 1st Respondent, the legal ownership of the premises has to be established first. It is an established view that it is not within the jurisdiction of the Tribunal to determine title to property. Making any pronouncements in this matter would be an invitation to the Tribunal to entertain who between the 1st Applicant and the 2nd Respondent is the legal owner of the premises and a further determination of which of the two alleged title deeds to the property is the legal and valid title deed. That determination is clearly the province of the Environment and Land Court and any orders as to the preservation of the status as regards the suit premises herein ought to be sought in the said court.

15. In conclusion, I do find merit in the Respondents preliminary objection and further find that the tribunal lacks the jurisdiction to hear and determine this dispute. The application dated 19.10.2022 stands dismissed and any orders made pursuant thereto stand discharged.

RULING DATED, SIGNED AND DELIVERED VIRTUALL THIS 2ND DAY OF MARCH 2023.



HON. CYPRIAN MUGAMBI

CHAIRPERSON

3.2023

In the presence of;

Mr. Ali for the Respondents

In the absence of the Applicants and their Advocates

