



**Nursing Homes limited t/a Parkroad Nursing Homes v Nairobi North Healthcare Limited
(Tribunal Case E852 of 2023) [2023] KEBPRT 1160 (KLR) (Civ) (9 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1160 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E852 OF 2023
CN MUGAMBI, CHAIR
NOVEMBER 9, 2023**

BETWEEN

NURSING HOMES LIMITED T/A PARKROAD NURSING HOMES ... TENANT

AND

NAIROBI NORTH HEALTHCARE LIMITED LANDLORD

RULING

1. The tenant's application dated 1.9.2023 seeks orders that the Respondent be restrained from interfering with the tenant's property whether inside or outside the suit premises pending the hearing and determination of the suit. The application also seeks that a determination be made that the Applicant's occupation of the suit premises is res judicata and the Respondent is bound by previous orders made by the Tribunal. The Applicant has also sought a determination that the tenancy herein is a controlled tenancy.

The Tenant/Applicant's depositions

2. The tenant's affidavit sworn by Mr. Pravin Jinanlal Patel a director of the tenant/Applicant may be summarized as follows:-
 - a. That the Applicant has been a tenant in the suit premises for a period of over thirty (30) years as the tenant of the deceased Bhupinderkaur Walia and the tenancy relationship was a controlled tenancy.
 - b. That the Tribunal in BPRT Case No. 785 of 2009, Parkroad Nursing Home Ltd vs Bhupinderkaur Walia assessed the monthly rent payable at Kshs. 20,000/= on 15.12.2009.
 - c. That as far as the issue of the rent payable is concerned, the same has been dealt with conclusively by the Tribunal and is therefore res judicata.



- d. That on 30.8.2023, the Applicant received a letter from Nairobi North Health Care Ltd which the tenant considers a total stranger purporting to increase the monthly rent from Kshs. 20,000/= to Kshs. 450,000/= amongst others arbitrary and unlawful alterations.
- e. That the alleged landlord is a fraudster and an imposter having fraudulently obtained a certificate of lease in respect of the suit property.
- f. That the demands by the “imposter” are being made in disregard to the law and without the leave of the Tribunal to vary the rent.
- g. That the Applicant is a Nursing Home with in and out patients some with delicate conditions and the threatened vacant takeover of the premises by the Respondent may lead to unnecessary deaths, suffering and the patients emotional stress.
- h. That the registration of the Respondent as the owner of the demised premises was obtained through dubious means.
 - i. That despite the demise of the lawful owner of the property, the Applicant has continued to pay the rates and other taxes for the property.

The Landlord’s depositions

3. The Replying affidavit sworn by Mr. Maina Chege, the managing director of the Respondent may be summarized as follows:-
 - a. That the Respondent is incorporated and duly registered company in accordance with the Company’s Act No. 17 of 2015 and the legally registered owner of land parcel No. Nairobi/ Block 40/497.
 - b. That at the time the orders in BPRT Case No. 785 of 2009 were issued, the said Bhupinderkaur Walia had left Kenya and was long deceased.
 - c. That the Respondent’s claim as to collusion between the Respondent and National land officials are baseless.
 - d. That the Applicant is not deserving of the orders of injunction sought and has since taking possession of the property, entered into tenancy agreements with third parties charging them rent far above what the Tribunal ordered in case No. 785 of 2009, for example the tenant receives the rent of Kshs. 520,000/= from Rajana Medical Services.
 - e. That the Applicant has severally changed its names from Nursing Homes Limited to Parkroad Home but still remains registered as Nursing Home Limited in the Companies registry
 - f. That in BPRT Case No. 785 of 2009, the Applicant’s name appears as Parkroad Nursing Home Ltd and not Parkroad Nursing Homes as it appears in the current matter.
 - g. That in the Respondent’s certificate of medical registration, the Applicant’s name appears as Parkroad Nursing Home Ngara and not Parkroads Nursing Home as appears in the current matter; and in ELC No. E101 of 2023, the Applicant’s name is Parkroad Nursing Home.
 - h. That it is upon leaving that the tenant was charging Rajan Medical Services a monthly rent of Kshs. 520,000/= that the Respondent wrote to the tenant demanding the rent of Kshs. 450,000/=.



- i. That the tenant is charging rent against the orders in BPRT Case No. 785 of 2009 and where the tenant seems to hereby rely on.
- j. That the tenant seeks to urgently enrich itself at the expense of the Respondent's constitutionally guaranteed right to own property under article 40 of [the Constitution](#).

The Tenant's Supplementary and Further Affidavit

- 4. The two affidavits by the tenant may be summarized as follows hereunder:-
 - a. That the deponent has been authorized by the Board of directors of the tenant to swear the affidavits in this matter.
 - b. That in its response, the landlord has dealt with peripheral non issues not related to the real question before the Tribunal.
 - c. That the proper name of the Applicant is Nursing Homes Ltd t/a Parkroad Nursing Homes and nothing bars the Applicant from suing using either of the names.
 - d. That previously the Applicant was registered as Parkroad Nursing Home Limited which was officially changed to the current name in accordance with the laws governing the change of names.
 - e. That in any case, it is not clear how the change of names is related to the dispute before court.
 - f. That there is no subletting to or rental income from third parties.
 - g. That Mr. Maina Chege has no authority to act on behalf of the Respondent and is a fraud.

Analysis and determination

- 5. The issues that arise for determination in this application are in my view the following:-
 - a. Whether the tenancy between the parties herein is a controlled tenancy?
 - b. Whether this suit is res judicata.
 - c. Whether the tenant is entitled to the orders sought in its application?

Issue A

- 6. Although the tenant challenges the registration of the Respondent as the legal owner of the suit premises with claims that the Respondent had himself illegally registered as the proprietor thereof, the Respondent has in its replying affidavit exhibited a certificate of lease dated 17.5.2023. Prima facie therefore, the Respondent is the legal owner of the suit premises barring any cancellation of the certificate of lease or other lawful determinations on the illegality of the Respondent's certificate of lease. It is not also disputed that the tenant has been in the premises for a long time and that it was a tenant of the deceased Bhupinderkaur Walia. It is therefore clear that when the Respondent became the registered owner of the premises, he found the tenant in possession.
- 7. There does not exist any written agreement between the parties herein and the tenancy relationship between them is therefore that one of a controlled tenancy in the terms asserted to that term under Section 2 Cap 301. None of the parties have in any manner challenged the jurisdiction of the Tribunal in this regard.



Issue B

8. Other than the court order dated 21.12.2009, and a letter from M/S Masore Nyang'au Advocates addressed to Parkroad Nursing Home, the tenant has not produced any sufficient material as far as Case No. 785 of 2009 (BPRT) is concerned. The order annexed to the tenant's affidavit and marked as the tenant's exhibit "PJP 1" is in the following terms:

- " 1. The earlier orders issued on 26.8.2009 are confirmed.
- 2. The complaint is allowed with costs to the tenant"

The letter from M/S Masore Nyang'au & Company Advocates states in part:-

"We had asked in that application for the following orders:-

- a. The landlady be restrained from levying distress against you.
- b. The Tribunal declares that the rent payable was Kshs. 20,000/= as demanded by the landlady.
- c. The Tribunal declares that the rent due payable from you to the landlady has been expended on the repairs you carried out on the building.

The Tribunal granted those orders.

9. I do note that the tenant has not annexed the pleadings in the above suit and neither has it annexed an order in the terms set out in the letter by M/S Masore Nyang'au & Co. Advocates. The court order showing that the complaint was allowed with costs in the absence of other pleadings is not sufficient to enable the court determine whether the matter is res judicata. From the material placed before me, I do not therefore find any sufficient reasons to declare this suit res judicata BPRT Cause No. 785 of 2009.
10. And even if I was wrong on the above, I do not think the determination of the rent payable by a tenant by the Tribunal at a certain point in time bars the landlord from seeking to increase the rent of the said premises in the future provided the landlord follows the laid down procedure under the provisions of Cap 301 and specifically Section 4 thereof.

Further, and in this regard, Section 9(3)(a) and (b) of Cap 301 provides as follows:-

- (3) where a Tribunal has made a determination upon a reference, no further tenancy notice shall be given in respect of the premises concerned which is based on any of the matters affected by the determination:
 - (a) in the case of assessment of rent until after the expiration of two years; OR
 - (b) in any other case, until after the explanation of twelve months after the date of determination, unless the Tribunal after the time of determination specifies some shorter period.

Issue C

11. It is not disputed that the tenant has been paying the rent of Kshs. 20,000/= for the premises, at least as far as the affidavits show. The increment of rent the tenant complains of, is that contained in the landlord's letter of 30.3.2023. The said letter informs the tenant that the Respondent has commissioned their architect and contractor to assist in various renovations of the building. The



Respondent in the said letter states that it has no problem with the tenant remaining in the premises before the contractor moves on site but the tenants stay shall be subject to the following conditions amongst other conditions:

- a. Sign Building Operation License Agreement for three (3) months renewable on payment of Kshs. 450,000/= per month payable quarterly in advance (i.e. Kshs. 1,350,000/=).
12. In order for the landlord/Respondent to succeed in increasing the rent payable for the suit premises OR even in order for the Respondent to succeed in removing the tenant from the premises for purposes of carrying out the desired renovations, the Respondent is obligated to comply with section 4(1) and 4(2) of [Cap 301](#) which provides as follows:-

“4(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated and no term or condition in or right or service enjoyed by the tenant of any such tenancy shall be altered otherwise than in accordance with the following provisions of this Act.”

4(2) A landlord who wishes to terminate a controlled tenancy or to alter to the detriment of the tenant any term or condition in or right or service enjoyed by the tenant under such a tenancy shall give notice in that behalf to the tenant in the prescribed form.”

13. The letter by the landlord dated 30.8.2023 does not amount to the notice contemplated under Section 4(2) of Cap 301 above and I hold it to be of no consequence as far as the intended increment of rent is concerned.
14. The tenant has made various claims as to the illegality of the certificate of lease held by the Respondent. I think for the purposes of this ruling, it is not for the Tribunal to inquire into the legality of the certificate of lease held by the Respondent and I am satisfied that prima facie, and as discussed elsewhere in this ruling, the Respondent is the proprietor of the suit premises barring any valid legal challenge.
15. The landlord/Respondent has also raised issues with the various names that the tenant has called itself on different occasions. I note that the letter by the landlord is addressed to Parkroad Nursing Home. The certificate of registration under the [Registration of Business Names Act](#) produced by the tenant shows its name to be Parkroad Nursing Home, previously known as Parkroad Nursing Home (K) Ltd. This was in 1979. The same name appears in the certificate of registration issued on 3.7.1989. the certificate of incorporation exhibited describes the tenant as Nursing Home Ltd and was issued on 23.9.1981. the PIN Certificate annexed also describes the tenant as Nursing Homes Ltd which is the name of the tenant in these proceedings. I do not therefore think anything turns on the nomenclature of the tenant and further, the Respondent does not seem to suffer any difficulty in identifying the tenant in its premises.

Orders

16. On the basis of the foregoing findings, I do make the following orders:
 - a. That the tenancy between the parties herein is a controlled tenancy governed by the provisions of Cap 301 of the Laws of Kenya.
 - b. That this suit is not res judicata BPRT Case No. 785 of 2009.



- c. That the Respondent's letter of 30.8.2023 is not and does not amount to the notice to terminate or alter terms of tenancy as contemplated under Section 4(1) and 4(2) of Cap 301 and is therefore null and of no consequence.
- d. That the Respondent is hereby injuncted from ILLEGALLY interfering with the tenant's occupation, use and possession of the suit premises comprised in L.R. No. Nairobi/Block 40/497 (formerly 209/3530/8 Nairobi).
- e. That the Respondent is further and specifically prohibited from arbitrarily increasing the rent payable for the suit premises without following the procedure laid down under Cap 301 of the Laws of Kenya.
- f. That the landlord will bear the costs of this application.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9TH DAY OF NOVEMBER 2023.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

9.11.2023

Delivered in the presence of;

Mr. Mutuku for the tenant

In the absence of the landlord and Counsel

