



**Mumbo v Khisa & another (Tribunal Case E1170 of 2022)  
[2023] KEBPRT 227 (KLR) (Civ) (14 April 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 227 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E1170 OF 2022  
A MUMA, VICE CHAIR  
APRIL 14, 2023**

**BETWEEN**

**ELLY ODHIAMBO MUMBO ..... TENANT**

**AND**

**EDWARD KHISA ..... 1<sup>ST</sup> RESPONDENT**

**CAROLINE KHAKAME ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**A. Parties and representatives**

1. The applicant Elly Odhiambo Mumbo is the tenant and rented space on the suit property Nairobi Block 63/742. (hereinafter known as the ‘tenant’)
2. The firm of Orwa Seda & Co Advocates represent the applicant/tenant in this matter.
3. The Respondents are the landlords and the owner of the suit property and rented out space to the tenant. (hereinafter known as the ‘landlord’)
4. The firm of W ambo Munyala & Co Advocates represent the Landlord/Respondents in this matter.

**B. The dispute background**

5. The Tenant has filed a Reference and application dated December 9, 2022 under section 12 (4) of the [Landlords and Tenants \(Shops, Hotels and Catering\) Establishments Act](#) Cap 301 seeking restraining orders against the landlord for locking the premises.
6. The landlord has in opposition also filed an application dated December 28, 2022 seeking to have the tenant’s reference and application struck out for being an abuse of the court process. .



### C. The Tenant's claim

7. The Tenant/Applicant filed a Reference dated December 9, 2022 seeking restraining orders against the landlord.
8. The tenant has also filed a replying affidavit dated February 1, 2023 in response to the landlord's application.

### D. The Landlord/Respondent's claim

9. The landlord has filed an application dated December 28, 2022 seeking to have the interim orders granted in favor of the tenant set aside and to strike out the suit for being an abuse of court process.
10. The Landlord/Respondent has filed a replying affidavit dated January 23, 2023 in opposition to the tenant's application.

### E. LIST OF ISSUES FOR DETERMINATION

11. The issues raised for determination are as follows;
  - a. Whether suit as drawn is subjudice and therefore an abuse of process of this tribunal.

### F. Analysis and findings

#### Whether the Tenant's application offends the rules of subjudice?

12. tenant approached this tribunal by way of the reference dated December 9, 2022. The tenant was seeking orders that the Tribunal restrain the Landlord from closing the premises.
13. The Landlord responded by way of a replying affidavit as well as an application which brought new facts to the matter for consideration by this Tribunal.
14. The Landlord highlighted the fact that the Tenant had filed another suit at the Magistrates Court being Civil Suit No 10787 of 2018 the said suit was against the same parties herein and raised the same issues as the ones raised in the present suit.
15. In light of this, the landlord pointed out that the said suit was still ongoing and having the Tribunal proceed with the present suit would be offending the laws on subjudice as set out in Section 6 of the [Civil Procedure Act](#) which provides that:

No court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim litigating under the same title, where such suit or proceeding is pending in the same court or any other court having jurisdiction in Kenya to grant the relief claimed.”

16. In the case of [Kinatwa Co-operative Savings & Credit Society Limited v Kinatwa Prestige Ltd](#) [2021] eKLR it was stated that;

According to *Black Law Dictionary* 9th edition, sub judice means-

“before a court for determination.....”



The doctrine of *res sub-judice* prevents a court from proceeding with the trial of any suit in which the matter in issue is directly and substantially the same with the previously instituted suit between the same parties pending before same or another court with jurisdiction to determine it.

17. It is my observation that the suit before the magistrates court does indeed involve the same parties, additionally the subject matter of the suit is the same. Having been instituted before the present suit, it is only right in law that the previous suit takes precedence over this matter.
18. Additionally, I take note of the fact that the tenant did not oppose the fact that there is a present suit before the magistrates' court as presented by the landlord. As such I am persuaded to believe that the tenant could be forum shopping in order to get favorable orders which then amounts to abuse of the court process.
19. In light of the foregoing, I find that the tenant's application is an abuse of court process and should be struck out.

#### **G. Orders**

- a. The upshot is that the Tenant's Reference and Application dated December 9, 2022 are hereby struck out for going against the law on ground of being sub judice.
- b. The Landlord's Application dated December 28, 2022 is hereby upheld.
- c. The tenant shall pay costs to the landlord assessed at Kshs 10,000.00

**HON A MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 14<sup>TH</sup> DAY OF APRIL 2023 IN THE PRESENCE OF OMONDI FOR THE TENANT AND ANDATI FOR THE LANDLORD.**

**HON A MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

