



**Abdalla & 4 others v Umoja Mosque Community Welfare Organization & another
(Tribunal Case 400 of 2021) [2023] KEBPRT 1109 (KLR) (10 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1109 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 400 OF 2021
CN MUGAMBI, CHAIR
NOVEMBER 10, 2023**

BETWEEN

**OMAR YUSUF ABDALLA 1ST TENANT
MOHAMED DIDA 2ND TENANT
SARAH TUNU MOHAMED 3RD TENANT
ERICK JUMA & ELLY OJWANG OMOLO 4TH TENANT
UMOJA YOUNG MUSLIM ASSOCIATION 5TH TENANT**

AND

**UMOJA MOSQUE COMMUNITY WELFARE
ORGANIZATION RESPONDENT**

AND

UMOJA MOSQUE & MADRASSA SOCIETY LANDLORD

RULING

Introduction

1. The application by Umoja Mosque and Madrassa Society dated 20.9.2023 seeks in the main an order that this Honourable court be pleased to review and/or set aside the ruling dated 24.3.2023 and subsequent orders flowing from it dismissing the application dated 23.2.2023.

The Applicant's depositions

2. The affidavit in support of the motion by one Mr. Bilali Aida Ismail may be summarized as follows:-
 - a. That he is the duly elected chairman of Umoja Mosque and Madrassa Society, competent to swear the affidavit.



- b. That Umoja Mosque and Madrassa Society is a duly registered society and recognized as such by the Supreme Council of Kenya Muslims.
- c. That the Applicant was registered in the year 2011 and at a meeting of 18.12.2022 a decision was made to revamp the organization.
- d. That as a result of the meeting of 18.12.2022, elections were held and the Applicant became the sole organization charged with the role of running the affairs of the Umoja Mosque and Madrassa Society.
- e. That as a consequence of the above, it was only logical that the Applicant takes up the role of the landlord of the suit premises, a role acknowledged by the Tenants who have been paying rent to the Applicant.
- f. That therefore, the ruling of 24.3.2023 inadvertently made a decision as to who is the rightful landlord against the wishes of the Umoja Mosque and Madrassa Community.
- g. That the matter was already coming up for submissions and the filing of further affidavits when instead, a ruling was delivered.
- h. That there was therefore an error apparent on the face of the record which error should be rectified.
- i. That there has also been a change in circumstances favouring the review of the aforementioned ruling and subsequent orders.
- j. That as a result of the ruling, members of the alleged landlord have been withdrawing funds from the bank accounts subject to this reference.

The Replying affidavit by Umoja Mosque Community Welfare Organization

3. The Respondents affidavit sworn by Mr. Ibrahim James Mkwaya may be summarized as follows:-
 - a. That the application is hopelessly out of time as it seeks to set aside a ruling delivered on 24.3.2023.
 - b. That the reason given by the Applicant for their failure to set aside the ruling of 24.3.2023 is devoid of merit since an exercise of due diligence by the Applicants Counsel would have revealed that the copy of this court's ruling annexed to their affidavit was in violation of order 20 rule 3 of the Civil Procedure Rules.
 - c. That the Respondents application dated 20.6.2023 was properly pending and the order dismissing the Applicant's application dated 4.4.2023 was made after the consideration of the merits of the said application.
 - d. That the Applicant's Counsel is guilty of delay in filing the instant application and has further not demonstrated that any mistake on his part was credible or genuine or honest on his part or that the same was based on any credible grounds.
 - e. That the Applicants have not come to court with clean hands as they have concealed material relevant to the determination of the said application and are therefore not entitled to the equitable relief that they seek as they themselves have not done equity.
 - f. That the Respondent stands to be prejudiced as it shall be kept from the fruits of the ruling of 24.3.2023.



- g. That an order has already been made in the Chief Magistrates Court at Milimani determining the issues pertaining to the suit property.
- h. That in the circumstances, the application by Umoja Mosque and Madrassa Society ought to be dismissed.

The Tenants affidavit

4. The affidavit sworn on behalf of the tenants by one Mr. Elly Ojwang Omollo may be summarized as follows:-
 - a. That he has the authority of his co-tenants to swear the affidavit.
 - b. That the tenants support the application by the Umoja Mosque & Madrassa Society.
 - c. That the tenants filed the instant reference as a result of a disagreement between the Respondent herein and Umoja Muslims Welfare Organisation.
 - d. That Umoja Mosque Community members formed a mediation committee to resolve the dispute and the committee came up with resolutions to resolve the dispute. Mr. Ibrahim Mkwaya, the Respondents chairman was present in that meeting.
 - e. That consequently, the committee came up with a new outfit for managing the welfare of Umoja Muslim Community Organisation called Umoja Mosque & Madrassa Society and effectively, Umoja Mosque & Community Welfare Organisation was discharged.
 - f. That on 29.1.2023, the individual Tenants entered into a lease agreement with Umoja Mosque & Madrassa Society and henceforth, all rent has been paid to the Applicant herein, Umoja Mosque & Madrassa Society.
 - g. That all the tenants and institutions within the Umoja Muslim Community are currently under the management of Umoja Mosque & Madrassa Society, the Applicant herein.
 - h. That there is no existing lease agreement between the tenants and Umoja Mosque & Community Welfare Organisation, the alleged landlord, and the said alleged landlords have no rights over the rent deposited in court.
 - i. That the application dated 20.9.2023 is merited and ought to be allowed.

Analysis and determination

5. The only issue that arises for determination in this application is whether the Applicant is entitled to the orders sought in its application dated 20.9.2023.
6. The orders set to be reviewed/set aside emanate from the Applicant's application dated 23.2.2023. The application sought the following prayers:
 4. That the Tribunal be pleased to issue a final order joining the interested party to this suit.
 5. That the Tribunal does allow the firm of Abdulrahman, Saad & Associates Advocates to come on record for the interested party.
 6. That this Honourable court be pleased to determine that the interested party is the landlord of the suit premises.



7. That the Honourable Tribunal be pleased to transmit the monies held in this Tribunal's Bank accounts into the interested party Bank account Umoja Mosque & Madrassa Society, Gulf African Bank Account No. 082 xxx 4302 Kenyatta Avenue Branch.
 8. Costs.
7. The Tribunal dismissed the application on the basis that the Applicant who is also the Applicant herein had not established any landlord/tenant relationship between itself and the tenants and further that the documents presented did not establish the relationship of landlord/tenant between the parties. It is these orders that the instant Applicant seeks to have set aside, that is, the orders declining the application. The Applicant now alleges that there are new circumstances and an error apparent on the record warranting the review of the orders of 24.3.2023.
8. A perusal and examination of the annexures to the Applicant's affidavit reveals the following:-
- a. That on 1.2.2023, the Deputy Registrar of societies wrote to the Applicant forwarding a list of the Applicant's officials as;
 - (i) Bilali Aida Ismael chairman
 - (ii) Robasora Abdi Galgalo Vice Chairman
 - (iii) Yusuf Mwasaru Mwashinga Secretary
 - (iv) Tamima Saidi Khamis vice Secretary
 - (v) Allan Otiende Mahonga Treasurer
 - (b) That by a resolution dated 26.3.2023, Mr. Bilali Aida Ismail was authorized to swear an affidavit on behalf of the other officials.
 - (c) That the Applicant was registered on 24.6.2011.
 - (d) That on 16.1.2022, the Regional Coordinator Nairobi wrote to the Director, Social Development, part of the letter (where relevant) read as follows:-

“The meeting was well attended by both the old members and the officials of the now defunct Umoja Mosque Community Welfare Organisation (UMCWU) led by their former chairman Ibrahim Mkwaya (minutes attached). After lengthy deliberations it was unanimously resolved that the interest of the Muslim community in Umoja can only be well represented through their organization in the name of Umoja Mosque & Madrassa Community Society. Any other organization or CBO in the name of Umoja Mosques is therefore null and void and cannot therefore purport to represent the interests of the muslims in this locality.”
 - e. The minutes of the meeting of Umoja Mosque & Madrassa held on 18.12.2022 has a list of forty-six (46) attendees. Mr. Ibrahim Mkwaya, the Respondent's chairperson appears on the list as No. 5 with his cellphone next to his name indicated as 0756 122 206.
 - f. It was a recommendation of the meeting of the 18.12.2022 that since there were about four organizations registered under the same institution, there should remain only one society, Umoja Mosque & Madrassa Society since most mosques in Kenya are registered under society.
 - g. It was a further recommendation of the said meeting that the community was to put in place a transition committee to oversee the elections and handing over.



- h. That at a meeting of the Applicant held on 22.1.2023, the following persons were elected as Board members of the Applicant;
 - i. Bilali Aida Ismail chairman
 - (ii) Roba Abdi vice chairman
 - (iii) Yusuf Mwasame Secretary
 - (iv) Tamina Saidi Assistant Secretary
 - (v) Herita Malinga Treasurer
 - (vi) Abdul Wakio member
 - (vii) Kassim Luqman member
 - (viii) Haji Mohamed member
 - (ix) Yassin Ibrahim member
 - (i) That the tenants have now been paying rent to the Applicant pursuant to the developments stated above.
9. The Tribunal has powers under Section 12(i) to vary or rescind any order made by the Tribunal under the provisions of the Act, [Cap 301](#). Under the provisions of Section 12(4) of [Cap 301](#), the Tribunal also has powers to investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant and may make such order thereon as the Tribunal deems fit.
10. I think the orders I am called upon to review and the complaint I am called upon to determine in this dispute is who between the two contestants, i.r. Umoja Mosque Community Welfare Organisation and Umoja Mosque & Madrassa Society is the proper landlord of the tenant and so that the interests of the tenant are well taken care of.
11. The deponent of the Respondents replying affidavit, Mr. Ibrahim Mkwya does not dispute that he attended the meeting of 18.12.2022 which recommended that due to the existence of many organizations all touching on the same institutions, one organization be formed and as a result of which the Applicant herein was formed and officials therefore elected. The Respondent does not also dispute the contents of the letter of the regional coordinator Nairobi which clearly shows that Mr. Ibrahim Mkwya attended the meeting of 18.12.2022 and which nullified any other organization purporting to represent the interests of the muslims in the locality (presumed to be Umoja).
12. The tenants in their affidavit sworn by Mr. Elly Ojwang Omollo have clearly deponed that they do not have any landlord tenant relationship with the Umoja Mosque Community Welfare Organization and that they have entered into lease agreements with the Applicant and to whom they been paying rent. The Respondent has not in any manner challenged this deposition by the tenants and the position therefore currently obtaining is that the tenants herein are the tenants of Umoja Mosque & Madrassa Society.
13. Consequently and in the circumstances, I will make the following orders:-
 - (a) That the order dismissing the application dated 23.2.2023 are hereby set aside.
 - (b) That Umoja Mosque & Madrassa Society is the landlord of the tenants and therefore entitled to the rent payable by the tenants for the suit premises.



RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 10TH DAY OF NOVEMBER 2023.

HON. CYPRIAN MUGAMBI- CHAIRPERSON 10.11.2023

In the presence of;

Mr. Ogessa for the tenants

Mr. Osman for the landlord, Umoja Mosque & Madrassa Society

