



**Ahmed v Nguli & 2 others (Tribunal Case E110 of 2023)
[2023] KEBPRT 460 (KLR) (Civ) (4 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 460 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E110 OF 2023
P MAY, VICE CHAIR
SEPTEMBER 4, 2023**

BETWEEN

ABDI MOHAMMED AHMED TENANT

AND

JK NGULI 1ST RESPONDENT

HASSAN MOHAMMED HASSAN 2ND RESPONDENT

HAMDI MOHAMMED ALI 3RD RESPONDENT

RULING

1. There are several pending applications that have been filed by the protagonists herein. However, the tenant was the first to move the Tribunal by filing the notice of motion filed under certificate dated 30th January, 2023 seeking for orders of temporary injunction against the 1st Respondent. The application was subsequently amended to include the other 2 respondents on 14th February, 2023.
2. The application is premised on the grounds set out on the face of the application and those enumerated in the supporting affidavit sworn by the tenant. The gist of the application is as stated below:
3. The applicant averred that he was a refugee living at the Daadab Refugee's camp and had together with other members of the camp formed a group called Taajir Group which had leased the demised premises. He stated that the business operated at the demised premises was their only source of income and that the respondents had frustrated him and failed to allow him to run the business.
4. The respondent filed a response in opposition to the application vide the Replying Affidavit sworn 27th February, 2023. The detailed response stated that the demised premises were being previously managed by Care International and the management was subsequently handed over to the Department of Refugee Services(DRS). The DRS Committee convened a meeting together with the camp manager



and it was resolved that the demised premises be handed over to Dagahaley Refugee Umbrella Youth Group.

5. The 3rd Respondent filed an application seeking to stay the ex-parte orders issued on 14th February, 2023. I shall not delve more into the said application as the same has been overtaken by events as it was filed prematurely even as the parties had an opportunity to canvass their concerns as envisaged under Order 51 rule 14 of the *Civil Procedure rules*.
6. The above position is fortified by decision in *Julius Mogaka Gekonde t/a E-Smart Technical College v Ouru Power Limited & another* [2016] eKLR whereby the court when faced with a similar situation in which the defendant filed two applications seeking to discharge the interim orders issued stated as thus:

‘Having dealt with the 1st application, it automatically follows that the defendants’ 2nd and 4th applications are resolved/settled as they basically sought the setting aside, stay or variation of the orders made on 30th October 2015. The 2nd and 4th applications were to my mind, prematurely filed by the Defendants as their contents therefore ought to have formed the basis or part of the Defendant’s response to the 1st application.’

7. There have been subsequent applications that have been filed by the parties have only addressed the actions taken by the parties during the pendency of the proceedings. I have considered the contents of the said applications and would be guided by the same in making a determination on the prayers sought by the tenant herein.
8. From the onset and in strict adherence of the doctrine of exhaustion, it is imperative to restate the role of DRS as provided under section 7(2) of the Refugees Act:
The functions of the Department shall be—
 - (a) responsible for all administrative matters concerning asylum seekers and refugees in Kenya;
 - (b) to co-ordinate activities and programmes relating to asylum seekers and refugees; and
 - (c) to handle all operational aspects of protection and assistance of refugees.
9. The DRS has in their response stated that the demised premises was to be used for the benefit of the youth under the Umbrella of Dahagaley Youth group and not solely the applicant. The decision to terminate tenancy was done after a meeting and the tenant was to get an alternative premise to establish their business. I have considered the roles of DRS and I believe that it acted within its mandate.
10. The respondents stated that the tenant has been undertaking the business without the consent of DRS. The letter addressed to the tenant and which was annexed by the tenant as AMA 1 affirmed the same. The rules governing the refugees have to take precedence in such instances and where a refugee is aggrieved, they can seek redress at the appropriate forum as provided under the relevant statutes.
11. Having made the above findings, it is clear that the application dated 30th January, 2023 and amended on 14th February, 2023 is without merit. The same is dismissed with no orders as to costs.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 4TH DAY OF SEPTEMBER, 2023

HON. P. MAY

VICE CHAIR

In the presence of:-

Khamalla for the Applicant



Masibo for the 2nd and 3rd Respondents

