



**Fancy Reliable Mattresses v Kenya Union of Food & Allied Workers (Tribunal Case 695 of 2014) [2024] KEBPRT 1482 (KLR) (Commercial and Tax) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1482 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
COMMERCIAL AND TAX  
TRIBUNAL CASE 695 OF 2014  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
OCTOBER 23, 2024**

**BETWEEN**

**FANCY RELIABLE MATTRESSES ..... TENANT**

**AND**

**KENYA UNION OF FOOD & ALLIED WORKERS ..... LANDLORD**

**RULING**

**A. Dispute Background**

1. On 11<sup>th</sup> March 2024, this tribunal allowed the reconstruction of the missing court file pursuant to an application by the Landlord dated 25<sup>th</sup> January 2024. The matter was therefore fixed for mention for pre-trial directions on 28<sup>th</sup> March 2024.
2. On 28<sup>th</sup> March 2024, both parties were directed to comply with Order 11 of the Civil Procedure Rules within Thirty (30) days with each party taking 15 days and the tenant starting. The matter was therefore fixed for mention on 6<sup>th</sup> May 2024 to confirm compliance.
3. On 6<sup>th</sup> May 2024, only the landlord appeared and confirmed that it had complied with the previous directions but the tenant had not. Consequently, this Tribunal dismissed the reference for want of prosecution in view of non-compliance by the tenant with the said directions.
4. The Tribunal ordered the tenant to vacate from the suit premises as per the termination notice and/or be evicted therefrom by a Licensed Auctioneer who shall be accorded security by the OCS, Central Police Station. The landlord was also awarded costs of the reference.
5. Through a motion dated 15<sup>th</sup> July 2024, the tenant moved this Tribunal seeking for stay of execution of the orders given on 5<sup>th</sup> June 2024 pending hearing and determination of MILIMANI HCCOMMISC/E422/2024. The tenant further sought acceptance of two cheques of Kshs 18,000/

= each being rent payment for June and July 2024 by the landlord in view of the pending case in the High Court.

6. The application is supported by the affidavit of Arsanul Hao sworn on 15<sup>th</sup> July 2024 and the grounds on the face thereof which we have read and considered.
7. The landlord filed a notice of preliminary objection dated 12<sup>th</sup> August 2024 stating that this Tribunal is functus officio with respect to the matter at hand and that hearing the application would be sub judice as a similar application was pending and awaiting directions in the High Court. The landlord therefore urges this Tribunal to refrain from further action on the matter until directions are given. As such, the Tribunal's jurisdiction to deal with the case is under challenge.
8. Through a replying affidavit to the preliminary objection sworn on 5<sup>th</sup> September 2024 by Arsanul Hao, the tenant attached a copy of an application dated 20<sup>th</sup> May 2024 filed in the High Court matter in which he seeks for stay of execution of this Tribunal orders of 5<sup>th</sup> January 2024 pending hearing and determination of the application and appeal.
9. The preliminary objection and the application were directed to be disposed of together by way of written submissions. However, only the landlord complied with the directions and the matter was therefore fixed for ruling.

#### **B. Issues for determination**

10. The following issues arise for determination; -
  - a. Whether the Tribunal has jurisdiction to hear and determine the tenant's application dated 15<sup>th</sup> July 2024.
  - b. Whether the tenant is entitled to the reliefs sought in the application dated 15<sup>th</sup> July 2024.
  - c. Who shall bear the costs of the application?
11. We intend to deal with issues (a) & (b) together as a decision on the first issue affects the second one.

#### **Issue (a) Whether the Tribunal has jurisdiction to hear and determine the tenant's application dated 15<sup>th</sup> July 2024 & Issue (b) Whether the tenant is entitled to the reliefs sought in the application dated 15<sup>th</sup> July 2024.**

12. The landlord filed a notice of preliminary objection dated 12<sup>th</sup> August 2024 stating that this Tribunal is functus officio with respect to the matter at hand and that hearing the application would be sub judice as a similar application was pending and awaiting directions from the High Court. The landlord therefore urges this Tribunal to refrain from further action on the matter until directions are given. As such, the Tribunal's jurisdiction to deal with the case is under challenge.
13. It is not in dispute that the issues raised in the tenant's application are pending for hearing and determination in MILIMANI HCCOMMISC/E422/2024.
14. Through a replying affidavit to the preliminary objection sworn by Arsanul Hao on 5<sup>th</sup> September 2024, the tenant has attached a copy of an application dated 20<sup>th</sup> May 2024 filed in the High Court matter in which he seeks for stay of execution of this Tribunal orders of 5<sup>th</sup> January 2024 pending hearing and determination of the application and appeal.

15. It is therefore clear that indeed, a similar application by the tenant is pending in the Superior Court and the act of filing a similar application before this Tribunal amounts to an abuse of court process which makes it a candidate for dismissal.
16. We agree with the landlord that this Tribunal having given final orders on the dispute between the two parties is functus officio and cannot engage further with the issues raised by the tenant in the current application which in any event are pending for hearing and determination before the Superior Court.
17. Before concluding on the issue, the application seeks for stay of execution of the orders of this Tribunal given on 5<sup>th</sup> January 2024. We have perused the Court file and there are no such orders on record. The skeleton file was reconstructed on 11<sup>th</sup> March 2024 pursuant to the landlord's application dated 25<sup>th</sup> January 2024. The application by the tenant is therefore misconceived besides being an abuse of the court process.

**Issue (c) Who shall bear the costs of the application?**

18. As regards costs, the same are in the Tribunal's discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall award costs to the Landlord/Respondent.

**C. ORDERS**

20. In view of the above analysis, the orders which commend to us are;
  - a. The tenant's application dated 15<sup>th</sup> July 2024 is hereby dismissed with costs.
  - b. The tenant shall pay costs of Kshs.20,000/- to the landlord for the application.
21. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23<sup>RD</sup> OCTOBER 2024**

**HON. GAKUHI CHEGE**

**(PANEL CHAIRPERSON)**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON. JOYCE AKINYI OSODO**

**(MEMBER)**

In the presence of:

Nyabena for landlord

No appearance for the tenant