



**Wasike v Wasike & another (Tribunal Case E014 of 2024)
[2024] KEBPRT 678 (KLR) (Commercial and Tax) (28 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 678 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
COMMERCIAL AND TAX
TRIBUNAL CASE E014 OF 2024
CN MUGAMBI, CHAIR
MARCH 28, 2024**

BETWEEN

JOSAM WANJALA WASIKE TENANT

AND

GETRUDE MUKOYA WASIKE LANDLORD

AND

JOSEPH OTIENDE RESPONDENT

RULING

1. The Tenant's Application dated 9.1.2024 seeks the following orders;-
 - a. That the Application be certified as urgent and the same be heard ex parte in the first instance.
 - b. That the court be pleased to compel the 1st and 2nd Respondents to open the premises and grant access to the Tenant.
 - c. That the 2nd Respondent be restrained from locking the premises pending the hearing and final determination of this Application and the Reference.
 - d. That the OCS Lumakanda police station to ensure compliance of these orders.
 - e. Costs
2. The Application is supported by the affidavit of Mr. Josam Wanjala Wasike, the Tenant and opposed by the replying affidavit sworn by Ms. Getrude Mukoya Mwenda the landlord, 1st Respondent.



3. The landlords have also filed a notice of motion application dated 15.1.2024 wherein the landlords have sought that the orders issued on 10.1.2024 in favour of the Tenant be set aside. I have not seen any response to the said Application by the Landlord.
4. The landlords have in their affidavits and submissions, challenged the jurisdiction of the Tribunal on the basis that this instant suit and the tenant's application are sub judice (sic) as the tenant had earlier filed Kakamega BPRT Case No. E095 of 2023 which has already been heard and determined by Hon. Ndegwa.
5. The landlords/Respondents also state that in the Ruling in case No. E095/2023, the Tribunal clearly ruled that it had no jurisdiction in the matter and observed that the dispute between the landlord and the tenant was to be determined by the Environment & Land Court.
6. The pleadings in BPRT Case No. E095/2023 (Kakamega) have been annexed to the Landlords replying affidavit as exhibit "GMM7". It is clear from the affidavit that the dispute in the said case touched on Land Parcel Nos. Kakamega/Lumakanda/2151 and Kakamega/Lumakanda/2160. The landlords have also annexed the lease agreement for the premises as exhibit "GMM3".
7. In the Ruling delivered by the Tribunal in Kakamega BPRT Case No. E095/2023, the court noted that it was the Tenant who challenged the Jurisdiction of the court even though he was the one who filed the Reference. While agreeing with the Tenants objection to the Jurisdiction of the Tribunal, the Tribunal delivered itself as follows at paragraph 32:-

“That without any indication of the type of business run by the Tenant, and in view of the clear wording of the lease agreement that the same was founded under the [Land Act](#) No. 6 of 2012 and [Land Registration Act](#) No. 13 of 2012, I have no difficulty in concluding that the matter before me has legitimate residence before the Environment & Land Court.”

In disposing of the matter, the court dismissed the Reference for want of jurisdiction.

8. The instant case is between the same parties and concerns the same subject matter. The Tribunal has already found that it has no jurisdiction to hear the dispute between the parties. The landlord has even deponed that upon the Tribunal opining that the matter was for determination at the Environment & Land court, she proceeded to file a case at the Kakamega Environment & Land court.
9. The Ruling of the Tribunal on the issue of Jurisdiction has not been overturned or set aside on review. It remains the Ruling of the Tribunal as far as the interpretation of the lease agreement between the parties herein is concerned.
10. This instant Reference by the Tenant is therefore Res judicata (and not sub judice as stated by the Landlord) and it is therefore not upon the Tribunal to rehear the matter.

Section 7 of the [Civil Procedure Act](#) in this regard provides as follows;-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of their claim, litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court.”

11. In the circumstances, I do find that the court has already settled the issue of jurisdiction in this matter and the court having already found that it has no jurisdiction, the Tenants Reference and Application



dated 9.1.2024 are hereby dismissed with costs. For the avoidance of doubt, any interlocutory orders issued in this matter stand discharged.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF MARCH, 2024.

HON. CYPRIAN MUGAMBI - CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Ms. Wangila for the Landlord and in the absence of the Tenant and Counsel

