



Anthony M'mosi c/o R.H.R.C. Church v Shaban Kinungu c/o Said Shaban Kinungu Family & another (Tribunal Case E054 of 2021) [2024] KEBPRT 369 (KLR) (12 March 2024) (Ruling)

Neutral citation: [2024] KEBPRT 369 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E054 OF 2021
CN MUGAMBI, CHAIR
MARCH 12, 2024**

BETWEEN

ANTHONY M'MOSI C/O R.H.R.C. CHURCH TENANT

AND

**SHABAN KINUNGU C/O SAID SHABAN KINUNGU
FAMILY 1ST RESPONDENT**

RICHARD OMONDI 2ND RESPONDENT

RULING

Introduction

1. The Tenants' Complaint/Reference to the Tribunal dated 6.9.2021 is in the following terms;-
 - a. That the Tenant rented the premises from the 2nd Respondent in the year 2020 and paid rent for two (2) years and have stayed on the said parcel of land for over one year now.
 - b. That the 1st Respondents are not the true owners of the plot and have proceeded to threaten to demolish the Applicant's church and are still threatening to do so.
 - c. That the 1st Respondents are also threatening to evict the Applicant from the suit premises without a lawful court order.

The Tenant's Case

2. The Tenant's case is that he leased the suit premises from the 2nd Respondent and that the 1st Respondents whom he does not recognize as his landlord has threatened to evict the Tenant/Applicant. The Tenant stated that he only wanted the court to determine who between the 1st and 2nd Respondents is the rightful landlord.



3. The Tenant further stated under cross examination that the 2nd Respondent did not show him any title documents as at the time they were entering into a lease agreement.
4. The Tenant also testified that he does not know the 1st Respondent and neither has he paid any rent to the said Respondent and that if indeed the land belonged to the 1st Respondent, he would require at least ninety days to vacate.
5. He further told the court, that it is the church which is the Tenant and not him personally and that the church Ministry had given him the authority to enter into the lease agreement.

The 1st Respondents Case

6. It is the 1st Respondents case that his family had not agreed to lease out its premises to a Christian Organization and for that reason, the 2nd Respondents who had leased the suit premises from the 1st Respondents' father was told to leave and agreed to vacate the suit premises within six months.
7. It is the 1st Respondents case that after the expiry of the six months, the 2nd Respondent sublet the premises to the Tenant herein.
8. The 1st Respondents states that the Tenant is unknown to his family and has never paid any rent to the family of the 1st Respondent.
9. It is stated by the 1st Respondent that the lease agreement between his father and the 2nd Respondent expired and the 2nd Respondent has not even paid any rent since the demise of the 1st Respondent's father.
10. The 1st Respondent has further stated that the suit land is currently registered in the names of four of his siblings as appears in the title deed.
11. When cross examined, the 1st Respondent confirmed that he was not there when the agreement dated 2.2.2009 was executed but confirmed that the lease also showed that the Tenants were buyers.
12. On re-examination, the 1st Respondent confirmed that the agreement dated 2.2.2009 was between his father, on one hand and Sylvester Peter and Charles and that the 2nd Respondent was not a party to the said agreement.
13. The 1st Respondents second witness relied on his statement filed in court and dated 11.9.2023. Under cross examination, he confirmed that he was not there when his father signed an agreement with the three gentlemen representing the church. He further confirmed that the church initially belonged to the 2nd Respondent.
14. The 1st Respondents third witness Bakari Saidi Kinungu also adopted his statement filed in court and dated 11.9.2023 as his evidence in chief. When cross examined on his statement, he stated that he was a witness to the agreement between his father and three representatives of the church, the 2nd Respondent was the pastor of the church.

The 2nd Respondent's Case

15. It is the 2nd Respondents case that the Tenant herein is his Tenant and that the suit premises known as Kwale/Ukunda/200 belongs to him.
16. The 2nd Respondent further testified that he is the one who authorized members of his church committee to sign the agreement dated 2.2.2009 with the father of the 1st Respondent.



17. The 2nd Respondent further testified that in the year 2010, he entered into an agreement with the deceased father of the 1st Respondent for the purchase of the suit land at an agreed purchase price of Kshs. 800,000/= out of which he paid a deposit of Kshs. 30,000/=.
18. It is the 2nd Respondent's further evidence that he has finished paying the purchase price for the suit premises.
19. On cross examination, the 2nd Respondent told the court that he had no evidence that he is the one who authorized for the signing of the agreement dated 2.2.2009 and that further he did not have an agreement for sale of the suit land to himself in 2010.
20. The 2nd Respondent further stated that he could produce evidence of the payment of Kshs. 500,000/= if he is allowed time to look for the said evidence.
21. It is the 2nd Respondent's case that he entered into an agreement with the Tenant herein in his personal capacity and he is therefore the landlord of the Tenant.
22. The 2nd Respondent though claiming to have purchased the suit land from the father of the 1st Respondent, he confirmed that he did not produce before court any sale agreement between him and the deceased father of the 1st Respondent.
23. The 2nd Respondent also stated that the Tenant has been paying him rent for the suit premises and although he did not produce any evidence showing that the Tenant had paid any rent to him, he remembers that the Tenant at some point paid him Kshs. 65,000/=.

Analysis and determination

24. The 1st and 2nd Respondents have filed their written submissions on this matter. I have read the same and I will consider them in this Ruling.
25. I have to determine at the very outset;
 - a. Whether the Tribunal has the requisite jurisdiction to hear and determine this matter?
 - b. Whether if I found that the Tribunal has jurisdiction, the Tenant is entitled to the prayers sought in its Application.

Issue A: Whether the Tribunal has the requisite jurisdiction to hear and determine this matter?

26. The Tenant, Anthony M'Mosi has styled his Complaint as Anthony M'Mosi T/A R.H.R.C. Church. The abbreviations RHRC represent Revelation Of Healing And Repentance Church. At paragraphs 1, 2, 4 and 8, the Applicant has deponed as follows;-
 - 1: That I am an adult person of sound mind and a pastor in Revelation of Healing Repentance Church, Ukunda in the County of Kwale.
 - 2: That I have authority on behalf of the church members to swear this affidavit.
 - 4: That the 1st Respondents are not the true owners of the plot and have proceeded to threaten to demolish the Applicants church and are still threatening to do so.
 - 8: That currently, the Applicants and the church members are occupying the premises having been bought from the 2nd Respondent.



27. During the hearing of the case, the Tenant told the court and I quote;

“It is the church which is the Tenant and not me personally. The Ministry has given me the authority to enter into the lease agreement.”

28. It is clear from the depositions of the Tenant and from his evidence in court that the Tenant to the suit premises is in reality the Revelation Of Healing And Repentance Church and not Mr. Anthony M’Mosi. Mr. M’Mosi is the pastor of the said church, a fact that seems to be admitted by all the parties.

29. Does the Tribunal have jurisdiction in disputes where the church is a Tenant?

Can a church premises be deemed to be a premises subject to controlled tenancies under Cap 301 of the Laws of Kenya? Is the church in this instance a shop, hotel or a catering establishment?

Under Section 12(4) of Cap 301,

“In addition to any other powers, specifically conferred on it, by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the Tenant and may make such order thereon as it deems fit.”

30. The jurisdiction of the Tribunal under the above section is limited to controlled tenancies. Under Section 2(1) of Cap 301, Controlled Tenancy means a tenancy of a shop, hotel or catering establishment

a. Which has not been reduced into writing or

b. Which has been reduced into writing and which

c. Is for a period not exceeding five years or

(ii) contains provision for termination otherwise than for breach of covenant within five years from the commencement thereof or

(iii) Relates to premises of a class specified under subsection (2) of this Section provided that the tenancy to which the Government, the Community or local authority is a party, whether as landlord or as tenant shall be a controlled tenancy.

31. Under the same Section;

“Hotel” means any premises in which accommodation or accommodation and meals are supplied or are available for supply to five or more adult persons in exchange for money or other valuable considerations.

“Shop” means premises occupied wholly or mainly for the purposes of a retail or wholesale trade or business or for the purposes of rendering services for money or money’s worth.

“Catering establishment” means any premises on which is carried out the business of supplying food or drink for consumption on such premises by persons other than those who reside and are boarded on such premises.”

32. A premises hired for the purposes of a church does not answer to the definitions of a shop, hotel or catering establishment as set out under the foregoing provisions of Cap 301. Such premises cannot therefore be deemed to be such shops, hotels or catering establishments and the tenancy of such premises cannot therefore be deemed to be controlled tenancies under Cap 301 of the Laws of Kenya. Consequently, the Tribunal cannot have jurisdiction over premises which are hired out as churches.



33. The above position is to be distinguished from situations where a church owns premises (as the landlord) and leases out the said premises to tenants for the purposes of carrying out businesses other than as churches, or where the church is itself a tenant carrying on business other than that of a church.
34. My view of this matter is therefore that, the Tribunal lacks jurisdiction to hear and determine this dispute.

Whether if I found that the Tribunal has jurisdiction, the Tenant is entitled to the prayers sought in its Application.

35. The Tenant has clearly stated that there does not exist a landlord/tenant relationship between himself/itself and the 1st Respondent, the 1st Respondent admits as much and states that they have not received any rent from the tenant church and neither do they recognize the church as their tenant. On its part, the tenant recognizes the 2nd Respondent as its landlord. The Tenant has however stated that if indeed the 1st Respondent is the owner of the suit premises, then the church is willing to vacate within ninety days as it lays no proprietary claim to the suit premises. the Tenant clearly has no claim under Cap 301 that he would sustain against the 1st Respondent. The Tenant's Reference/Complaint has not been directed against the 2nd Respondent and only seeks orders against the 1st Respondent whom both parties agree is not the landlord of the Tenant.

Even assuming I had jurisdiction in this matter, the Tenants claim would still fail for the lack of Tenant/landlord relationship between it and the 1st Respondent.

36. I have avoided dealing with the issue of the ownership of the suit premises as between the 1st Respondent's family and the 2nd Respondent for the simple reason that, that is a matter squarely for the Environment & Land Court and the Tribunal lacks jurisdiction to deal with ownership disputes.
37. consequently, I do not find any merit in the Tenant's Reference and the same is dismissed.
38. Each party shall bear their own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF MARCH, 2024

HON. CYPRIAN MUGAMBI - CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Kamau for the 1st Respondent

In the absence of the other parties.

