



**Maina v Hassan (Tribunal Case E084 of 2024)
[2024] KEBPRT 1879 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1879 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E084 OF 2024
M MAKORI, MEMBER
OCTOBER 30, 2024**

BETWEEN

LILY NJOKI MAINA LANDLORD

AND

FRANCIS WANJOHI HASSAN TENANT

RULING

1. This matter arises from the Landlord's Reference and Notice of Motion Application Dated 16th May 2024. The Landlord complains that the Tenant has defaulted to pay his monthly rent since the month of October 2021 thus accruing rent arrears amounting to Kshs. 660,000 which amount is inclusive of rent for June 2024.
2. In the Notice of Motion Application, the Landlady/Applicant seeks the following orders;-
 - a. Spent.
 - b. That this honourable court be pleased to order the Respondent/ Tenant to pay all the due rent arrears up-to date.
 - c. That subsequent to order 2 above, the honourable Tribunal be pleased to issue eviction orders against the Tenant/ Respondent
 - d. That the O.C.S Kaptembwa Police Station to offer security and ensure compliance with these Orders.
 - e. That costs of this application be provided for by the Tenant/ Respondent.
3. Additionally, the Landlord seeks to alter the terms of the Tenancy by increasing rent from Kshs. 20,000/- to Ksh. 120,000/- per month citing the current economic conditions vis a vis the current market rate.



4. In the supporting affidavit sworn by the Landlady/Applicant, the Applicant claims that the Respondent herein is her sibling and one of the beneficiaries of the Estate of Mary Mumbi Gitiriba-their mother.
5. The Applicant avers that the Respondent had been a tenant of the property namely Nakuru Municipality Block 4/225 (Ngei Estate) paying a monthly rent of Ksh. 20,000/- but had stopped paying rent to the provided account since the demise of their mother.
6. The Applicant avers that the Estate has liabilities which must be satisfied before the final stage of distribution of the Estate, and that the only avenue to acquire such resources is through rent remissions which includes the premises where the Respondent carries out business.
7. The Applicant prays that the Respondent be compelled to pay all due arrears from the month of October, 2021 to date which amounts to Kshs. 660,000/- and further that the Respondent be evicted from the said premise to pave way for a more deserving tenant who would pay the current rate of Kshs. 120,000/-per month since he has been served with a Notice to Terminate or alter the terms of the Tenancy.
8. She avers that due to the violent and uncooperative nature of the Respondent, the OCS Kaptembwa Police Station be directed to offer security at the time of compliance with directions of this honourable tribunal.
9. In response, the Respondent raised a Preliminary Objection Dated 12th July 2024 challenging the jurisdiction of this Honourable tribunal, on the grounds that Land Parcel number Nakuru Municipality/block 4/225 Ngei Estate-Nakuru being a residential property, does not fall within the ambit of this tribunal's jurisdiction and urges this tribunal to strike out the Reference and the Notice of Motion with costs to the Respondent.
10. The Respondent further filed a Replying Affidavit dated 12th July 2024 averring that the said property is the property of his late mother- Mary Mumbi Gitiriba and is neither a commercial nor a business premise. It is purely a residential property where he resides with his family.
11. He further avers that the Applicant and one Peter Simon Ngori are not Landlords in respect of the property, and that he was placed in the said property by his late mother not as a tenant but as one of her children and beneficiary.
12. That in High court Succession Cause (estate of the late Mary Mumbi Gitiriba (Deceased) His Lordship Hon Justice S.M. Mohochi decreed on 14th March 2023 that ;

That all assets be forthwith placed for sale, in accordance with Section 86 of the [Law of Succession Act](#).

- a. Specifically, Bethel House (Title No. Nakuru Municipality /Block 10/86) Mumbi House (Title No. Nakuru Municipality/ Block 10/52, and Ngei Estate (Title No. Nakutu Municipality / Block 4/225), Should be sold and the proceeds used to settle all liabilities. The remaining amount should then be distributed equally among the six beneficiaries namely Joseph Hassan Roble, Francis Hassan Wanjohi, Magaret Nyaguthii, Wanjohi Susan Wairimu Hassan, Lily Njoki Maina and Peter Simon Ngori.
13. That the property is already placed for sale and at no point were the administrators made landlords over their siblings. The Respondent further avers that the administrators reside in their late mother's residential and commercial properties and they do not pay rent for said properties.



14. The Respondent avers that the proposed increment of the rent by 500% is unfounded and backed by no valuation Report or any comparables at all. For these reasons, he prays that the Reference be struck out and the Notice of motion dismissed with costs.
15. The Applicant filed a further Affidavit sworn on 6th August 2024 denying the contents of the Respondent's Replying Affidavit and reiterated the contents of her Supporting Affidavit, stating that on the 5th of May 2022, the High court in H.C.F Cause No E003 Of 2022 In The Estate Of Mary Mumbi Gitiriba issued orders directing the Respondent among others to forthwith surrender the management of the Estate property especially Nakuru Municipality Block 4/225 to the Administrators; a direction which the Respondent disobeyed.
16. The Respondent further filed a further Replying Affidavit sworn on 11th of September 2024 averring that by the letter dated 10th of September 2024, from the physical planner, Nakuru West Sub County, County Government of Nakuru which indicates that property is a residential premise and no change of user to commercial/Business has ever been issued. For this reason, he avers that the tribunal lacks jurisdiction the matter.
17. Both parties filed their respective submissions.
18. From the documents filed and arguments raised by both parties, the following issues arise for determination.
 - a. Whether this tribunal has jurisdiction to hear and determine this matter?
 - b. Whether the Applicant is entitled to the orders sought?
19. The jurisdictional challenge in this case arises from the Respondent's claim that Nakuru Municipality Block 4/225 is purely residential and therefore outside the ambit of the Landlord and Tenant (Shops, Hotels, and Catering Establishments) Act, which governs certain commercial tenancies in Kenya. Under this Act, the Tribunal has jurisdiction over controlled tenancies of properties that fall within specified business categories, specifically those used as shops, hotels, or catering establishments.
20. It is the determination of this Tribunal that while the property's permitted user is residential, the Applicant's argument hinges on the Respondent's occupation without payment of rent despite sub-leasing the same and receiving rent, something he used to do before the demise of their mother, thereby gaining from the same at the detriment of the Estate, which indirectly impacts the Estate's financial obligations.
21. In *Republic v. Business Premises Rent Tribunal Ex Parte Mukesh K. Shah* [2013] eKLR, the Court of Appeal held that the Tribunal has jurisdiction over cases in which rent disputes arise from commercial properties and other spaces functioning as business premises. This ruling aligns with *Kenya Airways Corporation Ltd. v. Tobias Oganya Auma* (1984), which defined business premises to include any activity generating revenue, not just strictly commercial operations.
22. The Tribunal acknowledges the existence of a landlord-tenant relationship between the Respondent and the Estate, represented by the administrators, under the [Law of Succession Act](#) (Cap. 160). When the deceased, Mary Mumbi Gitiriba, passed away, her estate—including Nakuru Municipality Block 4/225—fell under the legal management of the appointed administrators. As such, any rent collected from tenants, or from beneficiaries in occupation, is deemed estate income and is subject to the administrators' management for the purpose of settling estate liabilities.
23. The Respondent's continued occupancy, therefore, establishes a landlord-tenant relationship with the Estate, wherein the administrators, acting as landlords on behalf of the estate, are entitled to enforce



rent collection and any related tenancy terms. This relationship obligates the Respondent to remit rent to the Estate, just as any tenant would, as his occupancy is tied to estate management rather than mere familial status.

24. Although the property was previously his mother's, a de facto landlord-tenant relationship now exists due to the Respondent's continued occupancy. According to the *Law of Succession Act* (Cap. 160), the administrators of an estate have the right to manage estate assets, including the collection of rental income. Therefore, a quasi-business activity exists as the property generates revenue intended for debt settlement and estate management.
25. Further, the Applicant seeks payment of arrears amounting to Kshs. 660,000. Under the *Evidence Act* (Cap. 80), the burden of proof lies with the party making a claim, as stipulated in Section 107, which states,

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

Here, the Applicant presented the unpaid rent records dating back to October 2021, establishing the existence of arrears and shifting the evidentiary burden onto the Respondent to dispute or justify the non-payment.

26. Additionally, Section 109 of the *Evidence Act*, places the burden on the Respondent to produce evidence contradicting the Applicant's claims or showing he had legal justification for the arrears. His failure to dispute these amounts constitutes an implicit admission of liability.
27. Further, the Applicant seeks to increase rent from Kshs. 20,000 to Kshs. 120,000, arguing that current market rates and economic conditions justify this adjustment. However, under Section 112 of the *Evidence Act*, any party asserting the existence of particular circumstances, such as market rates, bears the burden of proof. This entails providing a valuation report, evidence of comparable rentals, or market appraisals substantiating such an increment.
28. The absence of such evidence prevents the Tribunal from granting a rent increase, as any decision without objective valuation would be speculative and potentially unjust.
29. Based on the foregoing, the Tribunal makes the following orders;
- a. That the Landlord's Reference and Notice of Motion Application Dated 26th June 2024 is hereby partially allowed.
 - b. That the Preliminary Objection Dated 12th July 2024 is hereby dismissed
 - c. That the Respondent is ordered to pay Kshs. 660,000 plus all other rent in arrears from July 2024 to October 2024 within the next 45 days.
 - d. That if arrears remain unpaid after lapse of this period, the Landlord is at liberty to evict the Tenant.
 - e. That the OCS Kaptembwa Police Station shall ensure compliance of these orders.
 - f. Each party shall bear their own costs.

HON. MIKE MAKORI

MEMBER

BUSINESS PREMISES RENT TRIBUNAL



RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH OCTOBER, 2024 IN THE PRESENCE OF COUNSEL FOR THE LANDLORD/APPLICANT AND COUNSEL FOR THE TENANT/RESPONDENT.

HON. MIKE MAKORI

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

