



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT MERU

MISC. APPLICATION NO. E107 OF 2024

MICHAEL KUNGU KIGIA.....

.....APPELLANT

VERSUS

ERNEST KIREMA.....1ST

RESPONDENT

JAMES K. KIREMA.....2ND

RESPONDENT

RULING

1. For determination is the Notice of Motion dated 11/9/2024 pursuant to Order 51 Rule 3 of the Civil Procedure Rules, Sections 3, 3 (a) and 63 of the Civil Procedure Act seeking that:

1. Spent

2. This Honorable Court do enforce the order issued on 17th August 2023 and also do enforce the orders issues tribunal case no E018/2023 is not opposed, file closed or Court do order to act as Ksh.300 million damages must be paid by respondent as had no court to act (Sic).
 3. This Honorable Court do issue an order to enforce matter as required in Magistrates Court Act 2015 as (chairman of Business preunits Rent Tribunal has closed the file NO. E018/2023 and Order Chairman to forward file (Sic).
 4. Cost of this application be condemned on respondents (Sic).
2. The application is supported by the grounds on the face of it and an affidavit sworn by the Appellant on even date. He averred that he has been a tenant of the Respondents since 2019, but the Respondents closed his offices, yet he has not defaulted on rent, and unless the prayers sought are granted, he will suffer untold hardship.

3. The Respondents opposed the application vide a replying affidavit sworn by James K. Kirema, the 2nd Respondent herein, on 26/5/2025. He averred that the Appellant was ordered by the Business Premises Tribunal to clear rent arrears on 25/1/2024, which he has not. The Appellant was struck off from the list of mediators by the Mediation Accreditation Committee, and he is facing criminal charges for making a false document at Meru Law Courts. The orders of the Tribunal are only enforceable by it, unless the appellate jurisdiction of this court is invoked. The Appellant is a vexatious litigant who abuses the court process, and urged the court to dismiss the application with costs.
4. The Appellant swore a further affidavit and a further replying affidavit on 27/1/2024 and 2/7/2025, respectively, in support of his application.
5. The application was canvassed by way of written submissions, which were only filed by the Appellant. Counsel for the Respondents intimated that they would be relying on their replying affidavit.

Determination

6. Having considered the application, the replying affidavit and the submissions on record, I find the issue for determination to be whether the orders sought should issue.
7. The Respondents sued the Appellant in Business Premises Tribunal Case Nos. E20/2023 and E18/2023, seeking payment of rent arrears and vacation of the demised premises. On 25/1/2024, the Business Premises Tribunal ordered that, **“(a) The landlord shall file and serve an updated statement of account within 3 days. (b) The tenant shall upon receipt of the statement of account settle the outstanding rent arrears within 7 days. In default the landlord shall be at liberty to levy distress without any further reference to the Tribunal. (c) This ruling settles the applications filed by the parties and the reference. (d) Each party shall bear their own costs. (e) The orders shall apply to Meru BPRT E018 of 2023.”**
8. Those orders supersede the orders of 17/8/2023 hitherto sought to be enforced.

9. I have grappled with the fundamental question of whether this court is clothed with the requisite jurisdiction to enforce an order of the Business Premises Rent Tribunal.
10. Section 14 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act provides that, ***“(1) A duly certified copy of any determination or order of a Tribunal may be filed in a competent subordinate court of the first class by any party to the proceedings before such Tribunal or by the Tribunal, and on such copy being filed and notice thereof being served on the Tribunal by the party filing the same such determination or order may, subject to any right of appeal conferred by or under this Act, be enforced as a decree of the court. (2) The Tribunal shall, upon being served with a notice under subsection (1) of this section, or upon its own filing of such copy in the court, transmit to the court its record of the proceedings before it, and the same shall be filed by the court along with the certified copy of the determination or order.”***

11. Section 15 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act is explicitly clear that an appeal from the Business Premises Rent Tribunal does not lie to this court but to the Environment and Land Court as follows, ***“(1) Any party to a reference aggrieved by any determination or order of a Tribunal made therein may, within thirty days after the date of such determination or order, appeal to the Environment and Land Court: Provided that the Environment and Land Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.”***

12. The upshot from the foregoing is that the application dated 11/9/2024 is the epitome of abuse of the court process, and it is struck out for having been filed in a court without jurisdiction.

13. Cost goes to the Respondents.

**DATED AND DELIVERED AT MERU THIS 5TH DAY OF NOVEMBER,
2025**

S.M. GITHINJI

JUDGE

APPEARANCE:-

1. Michael Kungu Kigia (Applicant).
2. Rest (Respondents) absent.