



**Lake Naivasha Crescent Camp Limited v Chairman, Business Premises Rent Tribunal;  
Bark and Associates Limited (Interested Party) (Environment and Land Miscellaneous  
Application E003 of 2023) [2024] KEELC 1748 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 1748 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E003 OF 2023  
LA OMOLLO, J  
APRIL 11, 2024**

**BETWEEN**

**LAKE NAIVASHA CRESCENT CAMP LIMITED ..... APPLICANT**

**AND**

**CHAIRMAN, BUSINESS PREMISES RENT TRIBUNAL ..... RESPONDENT**

**AND**

**BARK AND ASSOCIATES LIMITED ..... INTERESTED PARTY**

**RULING**

**Introduction.**

1. This ruling is in respect to the Applicant's Chamber Summons application dated 17<sup>th</sup> July, 2023. The same is expressed to brought under the provisions of order 53 Rule 1(1) 2 and 4 of the [Civil Procedure Rules 2010](#).
2. The application seeks the following orders:
  - i. Leave be granted to the Applicant in terms of Order 53 and Part VI of the [Law Reform Act](#) Chapter 26 Laws of Kenya to:
    - a. Apply for Judicial Review for an order of prohibition prohibiting the chairman, Business Premises Rent Tribunal, Nakuru from entertaining and hearing or continuing to hear and determine Tribunal Case No. E104 of 2023 on the ground that there is no Landlord Tenant relationship between the parties named in the reference and as such the Tribunal has no jurisdiction to entertain the reference.



- b. Proceed to serve the Notice of motion for Judicial Review under Order 53 of the *Civil Procedure Rules, 2010*.
  - ii. That leave so granted to operate as stay of the proceedings in Reference Number E104 of 2023 Nakuru pending the hearing and determination of the Notice of Motion application.
  - iii. That the costs of this application be provided for.
3. The application is based on the grounds on its face and supported by the affidavit sworn on 17<sup>th</sup> July, 2023 by one Samuel Warugu Kimotho.

#### **Applicant's Contention.**

4. The Applicant contends that on 2<sup>nd</sup> December, 2011 it entered into a lease agreement with Wagichiengo Holdings Limited and Anastacia Wariara Wagichiengo over LR Nos 396/9 and 396/10. He further contends that the term of the lease was 15 years commencing 1<sup>st</sup> January, 2012 to 31<sup>st</sup> December, 2027.
5. It is the Applicant's contention that it has fully observed its terms of the lease to date including paid up quarterly rent up to June, 2023.
6. The Applicant further contends that it has greatly invested in the leased premises with employees and goodwill beyond Africa.
7. He contends that sometime in April 2023 he received a call from a stranger who informed him that he was the new owner of the suit premises. He adds that on 11<sup>th</sup> May, 2023 he received a notice of termination of its tenancy by the interested party.
8. He further contends that on 17<sup>th</sup> May, 2023 his advocates through a letter informed the interested party of the Applicant's objection to the said notice of termination.
9. The Applicant also contends that they filed a reference under Section 6 of Cap 301 being the Tribunal Case E104 of 2023. He further contends that contrary to the interested party's representation, there is no landlord tenant relationship between themselves.
10. It is the Applicant's contention that the interested party is a complete stranger and not a party to the lease agreement. He adds that he came to know of the interested party's interest in the suit property through a supporting affidavit filed by James Odera Ndoji in ELC E38 of 2023, Nakuru.
11. He contends that in the supporting affidavit the said James Odera averred that the interested party is the owner of the suit property having purchased it for value.
12. He also contends that the interested party has no capacity and/or locus to issue the notice it purported to issue to the Applicant. He adds that in view of the doctrine of privity of contract, a mere sale agreement does not confer ownership.
13. The Applicant contends that as a consequence the tribunal has no jurisdiction to entertain the notice issued on 10<sup>th</sup> May, 2023 as there is no landlord tenant relationship.
14. He ends his deposition by stating that the said termination notice was illegally accepted by the tribunal thus an outright abuse of the due process.

#### **Respondent's Response.**

15. The Respondent and interested party did not file any response to the application.



## Issues for Determination.

16. The Applicant filed his submissions on 3<sup>rd</sup> November, 2023 and sought to answer the following questions:
  - a. Why the Applicant first filed a Reference in the Tribunal being Tribunal Case Number E104 of 2023.
  - b. Why the same Applicant filed the proceedings herein seeking that the Tribunal be prohibited from entertaining the Reference E104 of 2023.
17. On the first question, the Applicant submits that it was forced by circumstance and the law to file the Reference challenged herein after receiving the notice from the interested party.
18. The Applicant relied on Sections 6 and 10 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments Act)*, Cap 301. It argues that the Applicant who does not intend to comply with the notice needs to first inform the requesting party of its intention to not comply before the date the notice is to take effect. It should then refer the matter to the tribunal whereupon the tenancy notice ceases to have effect.
19. The Applicant submits that it was statutorily mandated to refer the matter to the tribunal if he did not want the notice to take effect within the stipulated time. It adds that the same notwithstanding, the interested party had no justification to issue the same.
20. The applicant relies on the judicial decisions in *Sabeb v Hassanally* [1981] eKLR and *Nur Sheikh Mohammed v Mohammed Imani* [2021] eKLR. He submits that in order to avert the notice issued crystalizing on 1<sup>st</sup> August 2023, the Applicant had no choice but to file the reference.
21. On the second question as framed by the Applicant, it submits that despite having filed the reference in the tribunal, it submits that the chairman of the Business Premises Rent Tribunal (BPRT) lacks the jurisdiction to entertain the same.
22. It further submits that the said proceedings should be prohibited through an order of prohibition. It adds that it is trying to avert a situation where the Respondent makes any decision on the reference as the prohibition orders will not be effective then.
23. The Applicant also relies on the judicial case in *Edward Murimi t/a Edd Enterprises v Kenya Scouts Council* [2014] eKLR and submits that the Respondent should be prohibited from entertaining the reference as it lacks jurisdiction.
24. It also submits that the Applicant's tenancy is not covered under Cap 301 as it is a 15-year lease term. The Applicant also submits that there is no Landlord Tenant relationship between the Applicant and the interested party.
25. It submits that the lease agreement is between Wagiciengo Holdings Limited & Anastacia Wariara and the Applicant. The Applicant relies on the judicial decisions in *New Soita Ltd v Naivasha Southlake Sacco* [2021] eKLR and *Hurlingham Grocers Limited v APA Insurance Ltd* [2021] eKLR.
26. In conclusion the Applicant submits that the court should grant it leave to initiate judicial review proceedings as the BPRT lacks the jurisdiction.



## **Analysis and Determination.**

27. Upon perusal of the *ex-parte* chamber summons application, the affidavit in support of the application and annexures thereto, the statement of fact of the *ex-parte* applicant and submissions filed in respect of this Application, it is my considered view that the following issues arise for determination:
  - a. Whether leave should be granted to the Applicant to institute Judicial review proceedings.
  - b. Whether such leave, if granted, should operate as stay.
  - c. Which party should bear the costs of this application.
28. The Applicant has filed the present application seeking leave to commence judicial review for an order of prohibition against the Business Premises Rent Tribunal (BPRT) from hearing and determining Tribunal Case E104 of 2023.
29. He argues that the said tribunal lacks jurisdiction to entertain the notice issued on 10<sup>th</sup> May, 2023 by the interested party. He also argues that there is no landlord tenant relationship between itself and the interested party.
30. This court has perused the annexures to the affidavit in support of the application and indeed, there is a lease agreement dated 2<sup>nd</sup> December, 2011 between Wagiciengo Holdings Limited and Anastacia Wariara Wagiciengo and the Applicant which lease is for a period of 15 years beginning 1/1/2012 and ending 31/12/2027.
31. There is also evidence of a reference filed at the BPRT Nakuru being E014 of 2023 on 18<sup>th</sup> July, 2023.
32. This court also notes that the interested party allegedly purchased the suit property from Wagiciengo Holdings Limited and Anastacia Wariara Wagiciengo in 2023. This was twelve years after the Applicant had already entered into a lease with the lessors.
33. I have perused the statement of facts which gives a background of the dispute and the circumstances surrounding it. I am satisfied, prima facie, that the applicant is entitled to the orders sought.
34. Order 53 rule 1(4) of the *Civil Procedure Rules* provides as follows:

“The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise.”

## **Disposition.**

35. Consequently, and in accordance with the provisions of Order 53 Rules 3 (1) and (2) of the *Civil Procedure Rules*, I hereby order as follows:
  - a. Leave is granted to the Applicant to institute Judicial review proceedings for an order of prohibition prohibiting the chairman, Business Premises Rent Tribunal, Nakuru from entertaining and hearing or continuing to hear and determine Tribunal Case No. E104 of 2023.
  - b. Leave granted in (a) above shall operate as a stay of the proceedings at the Business Premises Rent Tribunal relating to Tribunal Case No. E104 of 2023 pending the hearing and determination of the substantive motion or until the Judge orders otherwise.



- a. The *ex-parte* applicant shall file the substantive motion within 21 days from the date hereof and serve the same upon the Respondent, the Interested Party and any other person as are affected by it within 14 days of filing.
- b. Costs shall be in the substantive Motion.

36. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 11<sup>TH</sup> DAY OF APRIL, 2024**

**L. A. OMOLLO**

**JUDGE**

In the presence of:

No appearance for the Applicant.

Court Assistant: Ms. Joseph Makori.

