



**Masia & 2 others v Mwangi & another; Kimani & another (Interested Parties) (Environment & Land Case E080 of 2024) [2024] KEELC 7250 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7250 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E080 OF 2024  
LN MBUGUA, J  
OCTOBER 30, 2024**

**BETWEEN**

**PAUL SILVANUS MASIA ..... 1<sup>ST</sup> PLAINTIFF  
GRACE MURIGI ..... 2<sup>ND</sup> PLAINTIFF  
PAUL NJUMBI MBU ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**STEPHEN KAMAU MWANGI ..... 1<sup>ST</sup> DEFENDANT  
WAINAINA REAL ESTATES LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**ZIPPORAH WAIRIMU KIMANI ..... INTERESTED PARTY  
JAMES NG'ANG'A T/A LITTLE VINEYARD AUCTIONEERS .... INTERESTED  
PARTY**

**RULING**

1. The Plaintiffs have filed 3 applications in this matter. The first one is the Notice of Motion dated 29.2.2024 seeking orders to restrain the 1<sup>st</sup> Defendant from levying distress pending determination of the suit as well as an order for costs. The application is premised on grounds on its face and on the 1<sup>st</sup> Plaintiff's supporting affidavit sworn on 29.2. 2024. He avers that the Plaintiffs have been tenants of the landlord on Plot No. 209/5810 for 15 and 24 years respectively occupying shop numbers; 1, 2, 3, 4, 5, 6, 7, 10, 11 and 12. That about 28.3.2023, the 1<sup>st</sup> Defendant issued the Plaintiffs with a notice to alter the terms of the tenancy which they failed to oppose and as a result, he issued them with a letter of offer dated 29.5.2023.



2. Subsequently, they filed Tribunal Case No. E595 of 2023 in which the 1<sup>st</sup> Defendant was temporarily restrained from altering the terms of the tenancy and in its ruling of 5.12.2023, the Tribunal directed that the Plaintiffs sign the offer letter dated 29.5.2023 on or before 1.1.2024 and they were subsequently served with proclamation notices from auctioneers for alleged rent arrears.
3. He contends that the Plaintiffs have no rent arrears and that they seek the indulgence of this court to determine when rent increment took effect.
4. The court heard the Plaintiffs' application ex parte on 1.3.2024 and directed the parties to appear on 15.4.2024 for directions. Subsequently, the Plaintiffs filed the Notice of motion application dated 1.3.2024 seeking a review of this court's directions of 1.3.2024 and an order to restrain the 1<sup>st</sup> Defendant from levying distress on the basis that they were no longer within the jurisdiction of the Business Premises rent tribunal by virtue of the letter of offer dated 29.5.2023.
5. The said application was heard ex parte on 5.3.2024, following which the court directed that the prevailing status quo be maintained until 15.4.2024.
6. The Plaintiffs filed yet another application dated 14.6.2024 seeking to restrain the 1<sup>st</sup> Interested party from interfering with their quiet enjoyment of the suit premises and seeking to be allowed to deposit rent in court pending hearing and determination of the suit.
7. In response thereof, the 1<sup>st</sup> Defendant filed a Notice of Preliminary Objection dated 20.5.2024 contending that this court has no jurisdiction to hear the matter as the tenancy between the parties falls within the jurisdiction of the Landlord and Tenants (Shops, Hotels and catering Establishment Act).
8. The Preliminary Objection was canvassed vide written submissions.
9. The Defendant's submissions are dated 19.8.2024 where it is contended that the unsigned letters of offer dated 29.5.2023 have not met the mandatory statutory requirement of both Section 3 (3) of the law of contract Act and Section 44 of the Land Registration Act, thus the said letters of offer are a nullity ab initio and cannot sustain this suit. To this end, the cases of Silverbird Kenya Limited v Junction Limited & 3 Others [2013] eKLR, Kangatta properties co ltd v charity Njeri t/a Winacom Crossline supplies & 4 Others [2014] eKLR as well as the case of Leo Investment ltd v Estuarine Estate Ltd [2017]eKLR are relied upon.
10. It also submitted that the letters of offer herein are unenforceable and cannot be relied upon to prove any tenancy relationship with the parties and as a result, the Plaintiffs and the 1<sup>st</sup> Defendant have a controlled tenancy.
11. It is argued that Section 12 of the Landlords and Tenant (Shops, Hotels and Establishments) Act vests the Tribunal with jurisdiction to deal with matters arising from a controlled tenancy such as the one which the Plaintiffs want this court to determine while section 15 of the same Act vests this court with jurisdiction to hear appeals from decisions of the tribunal.
12. It is submitted that since there is a clear procedure stipulated by legislation, the court would be overstepping its mandate if it determined the suit. To this end, the case of Speaker of the National Assembly v Karume [2008] 1KLR, Migiro v Paintmart and Allied Building Equipment (K) Limited (Civil Suit E448 of 2021) [2023] KEELC 18523 (KLR) (6 JULY 2023) (Ruling) as well as the case of Ola Energy Kenya Limited v Rashid Opondo Otieno t/a Kisumu Breakdown Services Limited [2021] eKLR are cited.
13. The Plaintiff's submissions are dated 2.8.2024 where they contend that the suit does not fall within the jurisdiction of the Business Premises Rent Tribunal since the tenancy has been reduced into



- writing by the letter of offer dated 29.9.2023. It is pointed out that the said letter of offer provides that the lease shall be for a period of 6 years commencing 1.6.2023. Thus it altered the definition of a controlled tenancy as provided under Section 2 of the Landlord and Tenants (Shops, Hotels and Catering Establishments) Act.
14. The Plaintiffs argue that the 1<sup>st</sup> Defendant's Preliminary Objection does not raise a pure point of law as there are facts which ought to be ascertained; being the question whether the disputed offer letters altered rent payable from ksh.16, 000/= to ksh.20,000/=.
  15. The Plaintiffs rely on the case of KCB Ltd v Popatlal Madhanji Brothers Ltd & Another [2019] eKLR, Ram International Limited v Maasai Mara University [2021] eKLR and Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others [2015] eKLR among others.
  16. I have considered all the issues raised herein. It is not in dispute that the Plaintiffs have been the 1<sup>st</sup> Defendant's tenants for a considerable period of time. When a dispute arose between them, the Plaintiffs filed Tribunal Case No. E595 of 2023 in which the Tribunal directed them to sign the offer letters dated 29.5.2023 on or before 1.1. 2024. On 15.4.2024, this court was informed that the BPRT case was finalized.
  17. The 1<sup>st</sup> Defendant now contends that this court has no jurisdiction to determine the issues raised in the suit and in the Notice of Motion dated 29.2.2024 since the BPRT is the one clothed with jurisdiction as the matter concerns a controlled tenancy.
  18. Section 2 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap. 301, Laws of Kenya defines a controlled tenancy to mean "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—
      - (i) 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 no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;
  19. It follows that a court does not have jurisdiction to deal with matters falling under the abovementioned provisions of law. See - Ola Energy Kenya Limited v Rashid Opondo Otieno t/a Kisumu Breakdown Services Limited [2021] eKLR.
  20. In the Tribunal Case No. E595 of 2023, the Plaintiffs were directed to sign offer letters dated 29.5.2023 on or before 1.1.2024. In essence, the said letters constitute tenancy agreements over the suit premises whose term as contained therein is 6 years with effect from 1.6.2023 to 31.5.2029. The tribunal ruling has not been challenged by way of an appeal.
  21. The dispute herein is therefore a question of reconciling accounts from the date the rent increment took effect and is well within this court's jurisdiction since the offer letters dated 29.5.2023 removed the dispute from the purview of the Tribunal. In the circumstances, the 1<sup>st</sup> Defendant's Preliminary Objection dated 29.2.2024 is not merited and is hereby dismissed. Seeing that the dispute is far from over as even the various applications of the plaintiffs have not been prosecuted, I direct that each party



shall bear their own costs of the Preliminary objection. The parties are also encouraged to explore alternative dispute resolution mechanisms to reconcile the accounts.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>th</sup> DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Odero for Plaintiff

Kinuthia for 1<sup>st</sup> Defendant

Court assistant: Vena

