



Case Number:	Tribunal Case 47 of 2014
Date Delivered:	16 Dec 2016
Case Class:	Civil
Court:	Business Premises Rent Tribunal
Case Action:	Ruling
Judge:	Mbichi Mboroki - Chairman Business Premises Rent Tribunal
Citation:	John Guchu Njoroge & another v Jotham Njami Mwariri [2016] eKLR
Advocates:	Kithinji for the Tenant Babu holding brief for Kangiri for the Landlord
Case Summary:	-
Court Division:	Tribunal
History Magistrates:	-
County:	Kiambu
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

BUSINESS PREMISES RENT TRIBUNAL

TRIBUNAL CASE NO. 47 OF 2014 (THIKA)

JOHN GUCHU NJOROGE

STEPHEN NJUGUNA MAINA.....TENANTS/APPLICANTS

VS

JOTHAM NJAMI MWARIRI.....LANDLORD/RESPONDENT

RULING

The reference in the matter was listed for hearing on **29th September 2016**. The advocate for the Landlord was in the Tribunal. The matter was called out at **10.35 a.m.** The advocate for the Tenant was not present.

The advocate for the Landlord applied for the Tenant's reference to be dismissed and the Landlord's notice to be allowed. The Tribunal allowed the application by the advocate for the Landlord and made the following orders;

1. That the Tenant's reference dated **29th January 2015** is dismissed for non attendance with costs.
2. The Landlord's notice dated **26th May 2014** is allowed.
3. The Tenant shall vacate and deliver vacant possession of the suit premises on or before **1st October 2016** in default an eviction order shall issue without further reference to the Tribunal.
4. Costs to be agreed or taxed by the Tribunal.
5. The OCS Thika to enforce compliance.

On **5th October 2016**, the advocate for the Tenant made an application under a certificate of urgency seeking to set aside and stay execution of the orders of the Tribunal issued on **29th September 2016**. The Tribunal issued interim stay orders on **5th October 2016** and listed the matter for hearing *inter partes* on **7th October 2016**.

On **7th October 2016** the parties and the advocates appeared before the Tribunal and could not agree on the *status quo*. The advocate for the Landlord maintained that the Tenant had been evicted from the suit premises. The advocate for the Tenant maintained that the Tenant was not evicted and was in the premises. The Tribunal ordered the Rent Inspector to inspect the premises and prepare a status report. The Rent Inspector's report was filed in the Tribunal on **31st October 2016**. The advocate of the parties have made oral submissions which are on record.

The Tribunal upon perusal of the record and upon hearing the submissions of the parties makes the following findings and observations.

1. The advocates for the Tenant was clearly served with the hearing notice and him and his client the Tenant should have been in the Tribunal on **29th September 2016**.
2. The advocate for the Landlord disclosed all the material facts to the Tribunal and in particular the orders of the Environment and Land Court in **ELC 867/2014**.

3. The Tenant/Applicant herein was not a party to **ELC 867/2014**.
4. There is no order issued by a competent court to prohibit the Tribunal from hearing and determining the reference between the parties herein.
5. The Rent Inspector's report filed on **31st October 2016** confirms that the Landlord attempted to evict the Tenant from the suit premises and the Tenant resisted and that he is in the suit premises.
6. The Tribunal does not issue any eviction orders.
7. An eviction order can only be obtained from the Chief Magistrate's Court pursuant to an order under **section 14 of Cap 301**.
8. The Landlord did not obtain an eviction order from a civil court which was capable of being used to evict the Tenant.
9. Eviction orders are executed by duly licenced court bailiff and auctioneers.
10. The role of the police was to offer the court bailiff and/or auctioneer security but not to evict a Tenant.

All in all, the Tribunal is satisfied that the process of execution of the orders of the Tribunal issued on **29th September 2016** was contrary to the provisions of **section 14 of Cap 301**.

All in all, the Tribunal is satisfied that it is in the interest of justice that the orders issued on **29th September 2016** be set aside so that the Tenant's reference can be heard and determined. The Tenant and the Tenant's advocate's failure to attend the Tribunal is what occasioned the orders of the Tribunal issued on **29th September 2016**.

The Landlord is entitled to throw away costs.

In the premises the Tribunal makes the following orders;

1. The Tenant's application dated **5th October 2016** is allowed.
2. The Landlord's preliminary objection dated **6th October 2016** is dismissed.
3. The orders of the Tribunal issued on **29th September 2016** are hereby set aside.
4. The Tenant's reference is hereby reinstated for hearing.
5. The Tenant shall pay the Landlord thrown away costs assessed at **shs 20,000/-**.
6. The thrown away costs shall be paid on or before **31st December 2016**.
7. Parties shall take hearing dates of the reference at the registry on priority basis.

Ruling delivered this 16th day of December 2016 in the presence of **Kithinji** for the **Tenant**, **Babu** holding brief for **Kangiri** for the **Landlord**.

MBICHI MBOROKI

CHAIRMAN

BUSINESS PREMISES RENT TRIBUNAL



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