



REPUBLIC OF KENYA



**Ngigi v Mbugua (Tribunal Case E1359 of 2024)
[2025] KEBPRT 436 (KLR) (5 December 2025) (Ruling)**

Neutral citation: [2025] KEBPRT 436 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1359 OF 2024
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
DECEMBER 5, 2025**

BETWEEN

PATRICK NJUGUNA NGIGI TENANT

AND

ELIZABETH WANJIKU MBUGUA LANDLORD

(In respect of the Landlord's Application dated 1st August 2025)

RULING

A. Introduction

1. This ruling relates to the Landlord's Notice of Motion dated 1st August 2025, supported by the Affidavit of Elizabeth Wanjiku Mbugua. Through the application, the Landlord seeks to set aside, vary, or discharge the ex parte injunctive orders issued by this Tribunal on 30th December 2024 and for the matter to be reopened for hearing with the participation of both parties.
2. The Landlord asserts that the orders were obtained through fraud and misrepresentation; that she was never served with the proceedings leading to the ex parte order; that the Applicant/Tenant is a stranger to her with whom she has never entered into any tenancy agreement; that she had let the premises to one Julius Mutua who is alleged to have sublet unlawfully; that the Tenant has refused to comply with her vacation notices including that of 8th July 2025; and that she is suffering financial loss due to the Tenant's continued occupation.
3. The Tenant opposed the application through a Replying Affidavit sworn on 17th September 2025, in which he maintains that he is a lawful tenant, having entered into a tenancy in 2022, and that the Tribunal's ex-parte orders of 30th December 2024 were properly granted after considering the material he presented. He further avers that service was duly effected upon the Landlord's known address, that the Landlord's claims of non-service are misleading, and that the present application is a calculated attempt to defeat or dilute the Tribunal's protective orders.



4. The Tenant also filed written submissions dated 11th November 2025, submitting that the application does not satisfy the established principles for setting aside orders; that the Landlord has presented contradictory positions; that no evidence has been tendered to support the allegations of fraud or misrepresentation; that the delay of more than seven months in presenting the application is inordinate and fatal; and that the Tribunal must exercise its discretion under section 12(1)(i) of Cap 301 judiciously and only upon demonstration of sufficient cause.
5. The Tribunal has carefully considered the pleadings, affidavits, annexures, and parties' submissions, together with the entire record including the letters exchanged between the parties' advocates.

B. Issues For Determination

6. The Tribunal identifies the following issues for determination:
 - a. Whether the Landlord has satisfied the legal threshold for setting aside the ex-parte orders issued on 30th December 2024.
 - b. Whether the Landlord has demonstrated sufficient cause to warrant the exercise of the Tribunal's discretion under section 12(1)(i) of Cap 301.
 - c. Whether the application dated 1st August 2025 is merited.
 - d. Who is liable to pay costs of the application?

C. Analysis Of Issues And Determination

Issue a) Legal Framework on Setting Aside (Section 12(1)(i) of Cap 301)

7. Section 12(1)(i) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301 grants the Tribunal power to vary or rescind any order made under that Act. This power is entirely discretionary and must be exercised judicially, guided by established jurisprudence.
8. The leading decisions include *Patel v E.A. Cargo Handling Services Ltd* [1974] EA 75, which holds that the discretion exists to avoid injustice or hardship but is not intended to assist a litigant who deliberately seeks to obstruct justice. *Shah v Mbogo & Another* [1967] EA 116 emphasises that the discretion is intended to prevent injustice but not to aid a person who deliberately obstruct justice or attempts to delay proceedings. In *Sebei District Administration v Gasyali* [1968] EA 300, the court held that a setting aside order should not be granted where the default was designed to delay the course of justice or was negligent or inexcusable. In *CMC Holdings Ltd v Nzioki* [2004] 1 KLR 173, it was held that an applicant must offer a plausible, credible, and consistent explanation for their default.

Issue b) Whether the Landlord Has Shown Sufficient Cause

9. The Landlord asserts that she was not served and was unaware of the proceedings. However, the Tenant's Replying Affidavit provides detailed evidence of service, including earlier service in Reference No. E230 of 2024. The Landlord has not presented an affidavit of non-service, nor has she provided any contrary evidence. The correspondence exchanged between the parties' advocates particularly the Landlord's advocates' letter dated 11th July 2025 demonstrates that the Landlord was aware of "BPRT Case E1359 of 2024," contradicting the allegation that she had no knowledge of these proceedings.
10. The Tribunal also notes internal contradictions in the Landlord's case. She denies any knowledge of the Tenant, yet complains that the Tenant is in arrears, has failed to vacate, and has refused to comply



with her notices. She simultaneously denies entering into a tenancy with the Tenant while purporting to enforce a tenancy against him.

11. These inconsistencies undermine the credibility of her explanation and do not meet the standard of a coherent or plausible defence as required in the case of *CMC Holdings v Nzioki*.
12. The allegations of fraud are unsubstantiated. Fraud must be pleaded with specificity and proved with cogent evidence, as reiterated in *Vijay Morjaria v Nansingh Madhusingh Darbar* [2000] eKLR. The Landlord presents no evidence, nor statement from the alleged initial tenant (Julius Mutua), no police report implicating the Applicant, and no documentary analysis showing falsification. The allegation of fraud therefore collapses for want of proof.
13. Further, the delay in bringing this application is inordinate. The ex parte orders were issued on 30th December 2024. The application to set aside was filed on 1st August 2025, more than seven months later. No explanation is provided for this delay. The jurisprudence, including *Shah v Mbogo* and *Sebei District Administration v Gasyali*, is clear that unexplained delay is fatal to applications of this nature.
14. The Tribunal also considers the prejudice that would be occasioned to the Tenant. According to the materials earlier placed before the Tribunal, including Mpesa statements and business investment records, the Tenant has made substantial investment in the business. Setting aside the protective injunction would expose him to imminent and potentially unlawful eviction before the dispute is heard on its merits. The Tribunal is persuaded that greater prejudice lies in disturbing the status quo.
15. On the whole, the Tribunal finds that the Landlord has not presented a satisfactory explanation for her default, has advanced inconsistent positions that cannot stand together, has failed to substantiate allegations of fraud, and has delayed inordinately in bringing the application. These factors collectively fall far short of the threshold required to invoke the discretionary power under section 12(1)(i) of Cap 301.

Issue c) Whether the Application Is Merited

16. Having evaluated all the material before it, the Tribunal is satisfied that the application dated 1st August 2025 is unmeritorious and constitutes an attempt to circumvent the lawful injunctive orders issued by this Tribunal. The Tenant's Replying Affidavit and submissions have adequately demonstrated that the application is an abuse of process and does not warrant the setting aside of the orders issued on 30th December 2024.

Issue d) Who is liable to pay costs?

17. As regards costs, the same are in the Tribunal's discretion under section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall award costs of the application to the tenant being the successful party.

D. Conclusion And Final Orders

18. Having considered the Landlord's application dated 1st August 2025, the Replying Affidavit dated 17th September 2025, the submissions dated 11th November 2025, and all the documents on record, the Tribunal finds and holds that: -
 - a. The Landlord has failed to demonstrate sufficient cause to justify the exercise of discretion under section 12(1)(i) of Cap 301.
 - b. The ex-parte orders issued on 30th December 2024 shall remain in force pending the hearing and determination of Nairobi BPRT NO. E987 OF 2025 between the two parties.



- c. The Landlord's application dated 1st August 2025 is hereby dismissed in its entirety.
- d. Costs are awarded to the Tenant assessed at Kshs 15,000/= to be offset against the rent account.
- It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF DECEMBER 2025.

HON. GAKUHI CHEGE - (PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON. JOYCE AKINYI OSODO - (PANEL MEMBER)

In The Presence Of: -

Ongeri for the Tenant

Ms Kadenge for the Landlord

