



**Maina v Muthoni & 2 others (Tribunal Case E188 of 2024)
[2024] KEBPRT 995 (KLR) (19 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 995 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E188 OF 2024
CN MUGAMBI, CHAIR
APRIL 19, 2024**

BETWEEN

NANCY NYAMBURA MAINA TENANT

AND

SUZANNE MUTHONI 1ST RESPONDENT

BLISS VILLA AGENCY 2ND RESPONDENT

RACHEAL NJOKI MURIUKI 3RD RESPONDENT

RULING

1. The Tenant's Application dated 9.2.2024 seeks an order that the Landlord be restrained from in any manner whatsoever and howsoever from interfering with the Tenant's quiet occupation and lawful enjoyment of the suit premises at Kahawa Sukari pending the hearing and determination of the case. The Tenant has applied for police assistance and an order compelling the Respondent to account for all the goods and items carted away and maliciously damaged in the premises and pay for any damage, defect or loss of the said items.

The Tenant's depositions

2. The Tenant has deposed in her affidavit in support of the motion that the Respondents have locked the suit premises without any justification and the closure of the premises has greatly inconvenienced the Tenant and damaged her reputation.
3. The Tenant has further deposed that the closure of the suit premises has disfranchised her baggage clients.



The Landlord's depositions

4. The Respondents affidavit has been sworn by one Mr. David Ndimi Mbugua who has deponed that the Respondents have not locked the suit premises neither have they in any way interfered with the Applicant's tenancy of the suit premises.
5. The Respondents have deponed that the suit premises were locked in the year 2023, when the Tenant fell into arrears and could not be traced but the same was opened in the year 2024, when the Tenant surfaced.

Analysis and determination

6. The only issue that arises for determination in this Application is whether the Tenant is entitled to the prayers sought in her Application.
7. The Tenant has claimed that the Respondents locked her suit premises without any justification. The Respondents on their part admit to locking the suit premises in December, 2023 but unlocked the same in January, 2024 and since then the Tenant has had an unlimited access to the suit premises.
8. The Tenant has not denied that the suit premises was indeed opened in January, 2024 and that since then, she has had free access to the said premises. It is also instructive to note that the Tenant does not state in her Application and Affidavit when the suit premises were locked and in the circumstances, I am persuaded that indeed, whereas the premises were locked in December 2023, they were opened in January, 2024.
9. The Tenant's Application is dated 9.02.2024 which can only mean that as at the time of filing the Reference and the Application, the suit premises had been opened and the Tenant had free unlimited access to the said premises.
10. In these circumstances, it is my view that the Tenant is clearly abusing the court process. In the case of; Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd & 2 Others, [2009] eKLR 229, the court of Appeal stated as follows;-

“The term abuse of court process has the same meaning as abuse of judicial process is regarded as an abuse when a party uses the judicial process to the mutation and annoyance of his opponent and the efficient and effective administration of justice. It is a term generally applied to a proceeding which is wanting in bonafides and frivolous, vexatious or oppressive.”

11. In the circumstances, I do find that the Application and the Reference by the Tenant lacks merit and are hereby dismissed with costs to the Landlord.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19TH DAY OF APRIL, 2024

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Ms. Nyambura for the Tenant

In the absence of the Landlord

