



**Muriithi t/a Pana Properties v Gate House Limited (Tribunal Case
E098 of 2023) [2023] KEBPRT 706 (KLR) (Civ) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 706 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E098 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
OCTOBER 13, 2023**

BETWEEN

PAUL MURIITHI T/A PANA PROPERTIES APPLICANT

AND

GATE HOUSE LIMITED RESPONDENT

RULING

1. By a Complaint under Section 12(4) of cap. 301 Laws of Kenya dated 13th June 2023, the tenant herein moved this Tribunal claiming that the landlord/Respondent had locked its office situated at Gate House, 2nd Floor, Room 212 and sought for reopening thereof.
2. The tenant simultaneously filed a motion of even date seeking orders to compel the Respondent to reopen the suit premises and in default, it be allowed to break into the same and resume conduct of business therein under supervision of the OCS, Central Police Station.
3. The tenant also sought for restraining orders against the Respondent from evicting, letting, subletting and/or apportioning the space, harassing, threatening and or intimidating him or interfering with his peaceful exercise of rights and responsibilities under the tenancy.
4. The application is supported by the affidavit of Paul Mureithi who is a partner of the tenant and the grounds on the face thereof to wit:-
 - a. That the defendants had no justifiable cause unlawfully without following due process with the malicious intention of evicting the tenant closed the suit premises occasioning in business loss and financial loss.
 - b. That the Respondents have been harassing, threatening and intimidating the tenant by locking up the suit premises on the slightest delay in rent payment.



5. Interim ex-parte orders were given on 19th June 2023 pending hearing inter-partes on 21st June 2023. On 21st July 2023, one Peter Gikonyo swore a replying affidavit on behalf of the Respondent stating that the application was defective, otiose and that there was no suit on which the prayers sought can be granted. He accuses the Applicant of coming to court with unclean hands and of concealment of material facts. The Applicant is also accused of being a habitual rent defaulter and that it was not the first time for him to move to this Tribunal in view of annexure “PG1”.
6. Prior to the instant suit, the Applicant had issued a post dated cheques but later informed the landlord not to bank it as per annexure marked “PGII”. Notice of outstanding rent marked “PGIII” had been issued on 25th April 2023 and on 11th May 2023, the Applicant undertook to pay the rent vide annexure marked “PGIV”. By July 2023, the Applicant was in arrears of Kshs.164,021/- as per annexure marked “PGV”. It is therefore sought that the application be dismissed and that the tenant vacates the suit premises.
7. The Respondent filed a supplementary affidavit sworn by Rose Wambui Storry jointly with Peter Njoroge Mburu on 29th August 2023 which refers to an affidavit by the tenant/applicant which we did not find in the court file.
8. We have checked the e-filing portal and noted that the further affidavit by the tenant was never uploaded together with the annexures although it is referred to in the further affidavit of the Respondent.
9. We are required to determine whether the Applicant is entitled to the orders of injunction sought under prayer 3 of the application as the issues raised in the complaint were addressed at the ex-parte stage and the orders sought therein granted.
10. It is not in doubt that the Applicant has not demonstrated to this Tribunal that he had performed all his obligations under the tenancy contract to warrant being granted the injunction orders sought herein in line with the decision in *Kyangavo – vs- Kenya Commercial Bank Limited & Another* (2004) eKLR where at page 13, it was held as follows:-

“Secondly, the injunction sought is an equitable remedy. He that comes to equity must come with clean hands and must also do equity. The conduct of the plaintiff in this case betrays him. It does not endear him to equitable remedies.....He who comes to equity must fulfil all or substantially all his outstanding obligations before insisting on his rights. The plaintiff has not done that”.
11. We have not seen evidence of payment of the amount of Kshs.164,021/- claimed by the landlord against the tenant. It is therefore our considered view that the tenant has failed to bring himself, within the principles considered in granting an injunction espoused in the case of *Giella – vs- Cassman Brown & Co. Ltd* (1973) EA 358 and *Mrao Ltd -vs- First American Bank of Kenya Ltd* (2003) eKLR. The application is a candidate for dismissal.
12. As regards costs, the same are in this Tribunal’s discretion but always follow the event unless for good reasons otherwise ordered. We have no reason to deny costs to the Respondent/Landlord.
13. Consequently, the final orders which commend to us in this matter are:-
 - a. The application dated 13th June 2023 is hereby dismissed with costs.
 - b. The landlord’s costs are assessed at Kshs.20,000/- all inclusive.
 - c. The complaint is settled in terms.



It is so ordered.

RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 13TH DAY OF OCTOBER, 2023.

HON. GAKUHI CHEGE HON. JOYCE OSODO

PANEL CHAIRPERSON MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of:

Wambeyi for the Landlord

Tenant in person

