



**Wachira v Karaba & 2 others (Tribunal Case E1019 of 2024)
[2024] KEBPRT 1676 (KLR) (Commercial and Tax) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1676 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
COMMERCIAL AND TAX
TRIBUNAL CASE E1019 OF 2024
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
NOVEMBER 28, 2024**

BETWEEN

STEPHEN MWANGI WACHIRA TENANT

AND

DAVID MWAURA KARABA 1ST RESPONDENT

MARY WAKARI GITUBA 2ND RESPONDENT

JEVANS CONSULTANT 3RD RESPONDENT

RULING

A. Dispute background

1. The tenant/applicant moved this Tribunal vide a Reference dated 9th September 2024 under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 with a complaint that the respondents had closed his business premises without notice.
2. The tenant simultaneously filed a notice of motion under certificate of urgency dated 9th September 2024 in which he sought for orders directing the Respondents to remove the padlocks affixed to his business premises together with orders of injunction to stop interference with his business until the suit is heard and determined.
3. In his affidavit in support, the tenant deposes that he has been in the business on the ground floor of the suit premises paying rent regularly from 2004 to date as per annexure marked 'SMW1' as well the August & September 2024 Mpesa transactions marked 'SMW2'.
4. The tenant deposes that he had no rent arrears as at 6th September 2024 but the 3rd Respondent had issued him with an illegal notice annexed as 'SMW3'.



5. The application is opposed through the replying affidavit of Joshua Mwangi Njoroge sworn on 2nd October 2024 wherein it is deposed that Jevan's Consult Valuers Company Limited is a private corporate entity practicing and dealing with repossession, valuation, estate and managing agents.
6. He further deposes that they are the authentic entity that is authorized to collect rent from the entire building registered as Thika municipality block 1774/1775 upon which the applicant's business premises are situated as per the annexed authorization copy marked jcv1.
7. The applicant is accused of having a history of late rent payment and therefore inconveniencing the running of the business. The applicant has gone ahead and constructed a shop annexed to the premises which is risking other tenants and the entire business for going against the law of construction and other County Government By-laws.
8. The Respondents therefore pray for dismissal of the applicant's application with costs.
9. Interim orders were issued at the ex-parte stage on 17th September 2024 directing removal of the padlocks placed on the tenant's business with immediate effect and in default, the tenant to break in and regain possession. The tenant was allowed quiet possession of the premises pending hearing of the application inter-partes with the OCS, Makongeni Police Station being directed to ensure strict compliance with the orders.
10. On 7th October 2024, the application was directed to be canvassed by way of written submissions but none of the parties complied.

B. Issues for determination

11. The following issues arise for determination; -
 - a. Whether the application dated 9th September 2024 is merited.
 - b. Who shall bear the costs of the application?

Issue (a) Whether the application dated 9th September 2024 is merited.

12. The tenant/applicant moved this Tribunal vide a Reference dated 9th September 2024 under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 with a complaint that the respondents had closed his business premises without notice.
13. The tenant simultaneously filed a notice of motion under certificate of urgency dated 9th September 2024 in which he sought for orders directing the Respondents to remove the padlocks affixed to the doors of his business premises together with orders of injunction to stop interference with his business until the suit is heard and determined.
14. Interim orders were issued at the ex-parte stage on 17th September 2024 directing removal of the padlocks placed on the tenant's business with immediate effect and in default, the tenant to break in and regain possession. The tenant was allowed quiet possession of the premises pending hearing of the application inter-partes with the OCS, Makongeni Police Station being directed to ensure strict compliance with the orders.
15. The application is opposed through the replying affidavit of Joshua Mwangi Njoroge sworn on 2nd October 2024 wherein it is deposed that Jevan's Consult Valuers Company Limited is a private corporate entity practicing and dealing with repossession, valuation, estate and managing agents.



16. He further deposes that they are the authentic entity that is authorized to collect rent from the entire building registered as Thika municipality block 1774/1775 upon which the applicant's business premises are situated as per the annexed authorization copy marked jcv1.
17. The applicant is accused of having a history of late rent payment and therefore inconveniencing the running of the business. The applicant has gone ahead and constructed a shop annexed to the premises which is risking other tenants and the entire business for going against the law of construction and other County Government By-laws. The Respondents therefore pray for dismissal of the applicant's application with costs.
18. We note that the Respondents in their replying affidavit did not dispute the allegation of illegal closure of the suit premises. There was no Tribunal or any other lawful court order allowing the said closure. We therefore find and hold that the tenant has established a prima facie case in line with the first principle in the celebrated case of Giella Vs Cassman Brown & Co. Ltd (1973) E.A 358.
19. In regard to the second principle of injury that cannot be compensated with monetary damages, it is our view that equity shall not allow a litigant to suffer an injury without a remedy and that in the face of the illegal closure of the suit premises by the Respondents, the applicant is entitled to be protected by this Tribunal in line with the decision in the case of Thomas Smith Aikman, Allan Malloy & Others Vs Muchoki & Others (1982) eKLR wherein the court of appeal held as follows;

“The conditions spelled out above for the grant of an interlocutory injunction were rightly understood but wrongly applied as follows: first, the appellants being lawfully in possession of the estates under the authority of the debentures executed by Mbo and Loresho, and the defendants having unlawfully seized and continuing in possession of the estates, the appellants had shown a clear and overwhelming prima facie probability of success; the court ought never to condone and allow to continue a flouting of the law . Those who flout the law by infringing the rightful title of others, and brazenly admit it, ought to be restrained by injunction. If I am adding a new dimension for the grant of an interlocutory injunction, be it so. Equity will not assist law-breakers. This disposes of the second ground for affirming the decision. It was, therefore a limited approach by the learned judge to say that the injury which the plaintiffs may have suffered as result of the defendants’ trespass or acts were capable of compensation by an award of damages. I will not subscribe to the theory that a wrongdoer can keep what he has taken because he can pay for it. The real injury arose from the unlawful seizure of the estates by the defendants in defiance of the law.’ (emphasis added).

20. The Respondents have claimed in their replying affidavit that the tenant was irregular in rent payment but no evidence of indebtedness was proffered in this case. He is also accused of constructing an illegal extension of his shop but there is absolutely no evidence to prove the allegation e.g by way of photographs or enforcement notice by the relevant authorities directing the demolition thereof. There is not even an application for such orders before this Tribunal or any other court. The allegations are therefore an afterthought meant to hoodwink this Tribunal into believing that they were justified in acting in the manner that they did. We refuse to buy the narrative.
21. Section 12(4) of Cap 301, provides as follows; -

“(4) In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy



made to it by the landlord or the tenant, and may make such order thereon as it deems fit”.

22. The tenant’s complaint in the reference and the application under consideration are a replica of each other and this ruling shall therefore apply to both without the necessity of any further investigation of the dispute.

Issue (b) Who shall bear the costs of the application?

23. As regards costs, the same are in this Tribunal’s discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall order costs of the application and reference to tenant/applicant.

C. Orders

24. In conclusion, the following final orders commend to us; -
- a. The tenant’s application dated 9th September 2024 is hereby allowed with the interim orders given on 17th September 2024 being confirmed.
 - b. The reference dated 9th September 2024 is settled in terms.
 - c. Costs of Kshs. 10,000 to the tenant/applicant to be offset against the rent account.
- It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF NOVEMBER 2024.

HON. GAKUHI CHEGE - (PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON. JOYCE AKINYI OSODO - (PANEL MEMBER)

In the presence of:

Ms Nkatha holding brief for Kirimi for the 2nd Respondent

Kamau for the 1st Respondent

