



**Kiraithe v Gichuki (Tribunal Case E1184 of 2022)  
[2023] KEBPRT 1159 (KLR) (16 June 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1159 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E1184 OF 2022  
CN MUGAMBI, CHAIR  
JUNE 16, 2023**

**BETWEEN**

**FRNKLINE KIRAITHE ..... APPLICANT**

**AND**

**SIMON GICHUKI ..... RESPONDENT**

**RULING**

1. There are two applications due for consideration in this ruling. Both applications are by the tenant.
2. In the application dated 14.12.2022, the tenant has sought orders that the landlord re-opens the suit premises and immediately re-instate the tenant back in the premises, or order that the landlord accepts the rent payable failing which the tenant be at liberty to deposit the same at the tribunal, an order that the landlord compensates the tenant for all goods and items maliciously damaged and for loss of business.
3. In the application dated 11.1.2023, the tenant has sought orders that the landlord be ordered to compensate the tenant for all the goods and items maliciously damaged and loss of business to the Applicant/Tenant amounting to Kshs. 382,290/=.
4. The Tenant's affidavit in support of his application dated 14.12.2022 may be summarized as follows:-
  - a. That since 2019, the tenant has operated his business at the suit premises paying a monthly rent of Kshs. 3,500/=.
  - b. That the landlord has declined to accept rent, issued a defective notice to the tenant and locked the business premises.
  - c. That the landlord owes the tenant Kshs. 7,500/= lent in the year 2021 and the landlord has not refunded the same to the tenant.



- d. That the tenant has not accumulated any rent arrears.
- 5. The Tenant's affidavit in support of his application dated 11.1.2023 may also be summarized as follows:-
  - a. That the landlord has disrupted the tenant's business leading to loss and damages of Kshs. 382,290/=.
  - b. That the landlord had locked the suit premises for a period of seventeen (17) days from 13.12.2022 to 30.12.2022.

### **Analysis and determination**

- 6. The tenant's complaint dated 14.12.2022 is to the effect that the landlord has locked the business premises, refused to accept rent and issued a defective termination notice contrary to [Cap 301](#) of the Laws of Kenya.
- 7. The issue of the closure of the premises was dealt with when the Tribunal ordered the landlord to re-open the same and the tenant's affidavit sworn on 11.1.2023 confirms this position.
- 8. On the issue of the defective notice, I have seen the landlord's notice to vacate (un-dated) annexed to the tenant's affidavit sworn on 14.12.2022, it is not the statutory notice contemplated under Section 4(2) of [Cap 301](#) and is therefore a defective notice.
- 9. In regard to the application dated 14.12.2022, the same having not been opposed and the tenancy notice having been found to be invalid, I will allow the same in terms of prayers 3, 4, 5 and 7 thereof.
- 10. The tenant has made a prayer for compensation for goods damaged and loss of business. This prayer in the application dated 14.12.2022 is replicated in the application dated 11.1.2023. The tenant's claim for loss of business at Kshs. 382,000/= is based on the grounds that the loss occurred from failure to access church instruments due to the closure of the premises. The tenant has alleged that the said instruments are rented out on a daily basis on the client's request.
- 11. It is not clear whether the tenant had rented the suit premises as a store for church instruments and from where they could be rented out. The tenant has not shown any business accounts for the renting out of the "church instruments" and it is not very convincing that the instruments are actually hired out on a daily basis. The tenant has not demonstrated by way of any evidence that indeed the instruments were for hire, for example no receipts or hire agreements have been exhibited and in my view, it is not enough to merely exhibit a table showing the rates per price of equipment. I do not find the claim sustainable and it is hereby dismissed.

### **Disposition**

- 12. Consequently, I hereby make the following orders:-
  - a. The application dated 14.12.2022 is allowed in terms of prayers 3, 4, 5 and 7 thereof.
  - b. The application dated 11.1.1023 is dismissed with no orders as to costs.
  - c. The reference is allowed in the terms above with costs to the tenant assessed at Kshs. 10,000/=.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16<sup>TH</sup> DAY OF JUNE 2023.**

**HON. CYPRIAN MUGAMBI - CHAIRPERSON - 16.6.2023**

