



**Korir v Kiriwa (Tribunal Case E013 of 2024) [2024] KEBPRT 811 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 811 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**TRIBUNAL CASE E013 OF 2024**  
**P MAY, MEMBER**  
**JUNE 7, 2024**

**BETWEEN**

**NELSON KIPKEMEI KORIR ..... TENANT**

**AND**

**JOHN KIRIWA ..... LANDLORD**

**RULING**

1. The present proceedings commenced *vide* the tenant's reference dated 6<sup>th</sup> February, 2024. Contemporaneous with the reference the tenant filed an application brought under certificate of urgency seeking for restraining orders against the landlord. The application is premised on the grounds set out on the face of it and those enumerated in the supporting affidavit sworn by the tenant.
2. The tenant stated that he entered into a tenancy with the landlord for the lease of a shop at a cost of Kshs. 9,000. He was to take possession once the then landlord vacated the premises. He stated that a meeting was convened between the landlord, the previous tenant and himself whereby it was agreed that he is granted possession of the demise. He avers that he moved into the premises sometimes on 15<sup>th</sup> January, 2024 after paying the agreed rent and deposit.
3. It is the tenant's testimony that he began partitioning the premises with the landlord's full knowledge. He was therefore taken aback when the landlord in blatant disregard to their agreement ordered him to vacate the premises without any plausible reason.  
  
He attributes his woes to the fact that he had sought out to undertake a business venture that was similar to the landlord's son who occupied one of the shops within the same building. The landlord refunded the rent and deposit in full. It was this action prompted the tenant to approach the Tribunal for intervention.
4. The landlord opposed the application through the Replying affidavit sworn on 4<sup>th</sup> March, 2024. He maintains that he acted within the law by asking the tenant to vacate the premises as he was on the premises without permission. With regards to the payment made, he stated that he thought they were



being made on behalf of the head tenant. He therefore attempted to remedy this through refunding the tenant the full payment made.

5. The landlord sought to canvass the application by way of written submissions while the tenant relied on the pleadings on record. I have considered the application; the affidavits and the other materials placed on record and wish to proceed as follows:
6. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of *Giella Versus Cassman Brown* (1973) EA 358. The conditions for the grant of an interlocutory are now, I think well settled. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury in which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of probability.
7. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of *Nguruman Limited versus Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that; “in an interlocutory injunction application, the Applicant has to satisfy the triple requirements; establishes his case only at a prima facie level; demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favor.”
8. Guided by the Court of Appeals holding, I wish to interrogate as to whether the Applicant has established a Prima Facie Case.
9. The case of *Mrao v First American Bank of Kenya Limited & 2 Others* [2003] eKLR defines a prima facie case as one which on the material presented in court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the respondent.
10. The *Landlord and Tenant (Shops, Hotels and Catering Establishments)* Act cap 301 which is the principal statute governing the operations of this Tribunal is intended to protect tenants from the exploitation and eviction from business premises by the landlord without due process and procedures laid down for termination of tenancy.
11. Section 4(1) of *Cap 301* stipulates the process of termination of controlled tenancies follows:
  - “(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with the following provisions of this Act
  - (2) A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.”



12. The Act also dictates that the notice must indicate the reasons for the proposed termination of tenancy and must also give a period of one month within which the tenant may voice his objection (if any) to the proposed termination. This requirement is contained in section 4(5) which provides *inter alia*:-
- “ A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and requires the receiving party to notify the requesting party in writing, within one month after the date of receipt of the notice, whether or not he agrees to comply with the notice.”
13. The above provisions of the Act are couched in mandatory terms. This therefore leads to the question of whether the landlord was justified and followed the above laid down process in asking the tenant to vacate the premises. This question cannot be answered conclusively at this stage without the Tribunal calling for evidence from the parties.
14. The tenant has stated that they invested in partitioning the premises. He therefore stands to suffer irreparable damage in the event the application is not allowed as there are other intrinsic losses which he will suffer such as loss of business opportunity and goodwill.
15. The upshot of the above is that the tenant’s application dated 12<sup>th</sup> February, 2024 is allowed in terms of prayer 2 with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7<sup>TH</sup> DAY OF JUNE, 2024.**

**HON. PATRICIA MAY - MEMBER\***

**BUSINESS PREMISES RENT TRIBUNAL**

**Delivered in the presence of;**

Muiruri for the Tenant/Applicant

Kamanda for the Landlord/Respondent

