



Odhiambo t/a Fortified Networks Limited v Faza Properties Limited (Tribunal Case E441 of 2024) [2024] KEBPRT 1214 (KLR) (27 August 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1214 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E441 OF 2024
A MUMA, MEMBER
AUGUST 27, 2024**

BETWEEN

**FREDRICK OTIENO ODHIAMBO T/A FORTIFIED NETWORKS
LIMITED APPLICANT**

AND

FAZA PROPERTIES LIMITED RESPONDENT

RULING

A. Parties And Their Representatives

1. Fredrick Otieno Odhiambo (the “Tenant”) is the proprietor of the Business known as Fortified Networks Ltd situated on Shop No. G31 in Digital Shopping Mall erected on land parcel no. LR 209/590 (the “suit premises”).
2. The Tenant appears in person.
3. Faza Properties Limited, (the “Landlord”) is the registered owner of all that premises erected on land parcel no. LR 209/590.
4. The Firm of Bryan Khaemba, Kamau Kamau & Company Advocates represents the Landlord in this matter.

B. Background Of The Dispute

5. Through a Reference and an Application dated 4th April, 2024 canvassed through Certificate of Urgency of even date, the Tenant moved this Honourable Tribunal seeking the following orders that inter-alia: the Landlord be compelled to reopen the suit premises, the Landlord be restrained from arbitrarily increasing the monthly rent, the Tenant’s right to quiet enjoyment to the suit premises be affirmed and the Landlord be restrained from evicting, harassing and/or interfering with the Tenant.



6. Upon perusal of the Tenant's Application and Reference, the Honourable Tribunal, on 9th April, 2024, directed the matter be fixed for hearing on 16th April, 2024.
7. On 14th May, 2024, the matter came up for mention where the Honourable Tribunal directed the Landlord to immediately reopen the suit premises in the interim pending hearing and determination of the Tenant's Application.
8. The Landlord, vide an Application dated 17th May, 2024 canvassed through Certificate of Urgency of even date, sought inter-alia the directions issued on 14th May, 2024 be varied and/or set aside and an order for compensation be issued in favour of the Landlord in the sum of Kshs. 300,000.00 being unpaid rent, legal costs and loss of user of premises.
9. Upon perusal of the Landlord's Application, the Tribunal directed the same be heard on 25th June, 2024. On 25th June, 2024, the Tribunal directed the Landlord to respond to the Tenant's Application dated 4th April, 2024 within 7 days and subsequently, the Tenant to respond to the Landlord's Application dated 17th May, 2024 within 7 days.
10. The Landlord, in response to the Tenant's Application, filed a Replying Affidavit sworn by the Managing Director of the Landlord on 1st July, 2024.
11. Subsequently, the Tenant, in response to the Landlord's Application, filed a Replying Affidavit sworn on 3rd July, 2024 and a Further Affidavit dated 23rd July, 2024.
12. It is therefore the Tenant's Application dated 4th April, 2024 and the Landlord's Application dated 17th May, 2024 that are the subject of this Ruling.

C. Tenant's Case

13. The Tenant admitted to entering into a tenancy agreement with the Landlord on 10th February, 2023.
14. The Tenant vide his Further Affidavit sworn on 23rd July, 2024 avers that the Landlord had locked the suit premises between March, 2024 and 16th May, 2024. He notes that this cause of action was due to the arbitrary increase of 20% of the monthly rent. In addition, the Tenant avers that at the time of forced closure he had no outstanding rent arrears. Contrarily, the Tenant, vide Further Affidavit admits to being in arrears of Kshs. 31,000.00 as at February, 2024 which he settled in March, 2024.
15. The Tenant notes that the Landlord's action is unfair and unjust and have caused him undue hardship and distress.

D. Landlord's Case

16. The Landlord, vide the Managing Director's sworn statement, affirmed that it had entered into a lease agreement over the suit premises with Tenant herein where it was agreed that the monthly rent would be equivalent to Kshs. 50,000.00. The Landlord averred that as at July 2023 the Tenant had fallen into arrears to the sum of Kshs. 155,000.00. He further noted that, in spirit of being accommodative, the Landlord entered into a payment plan dated 14th July, 2023 with the Tenant to settle the outstanding arrears.
17. The Landlord swore that the Tenant was yet to settle his arrears which had increased to Kshs. 204,000.00 contrary to Tenant's misrepresentation. Consequently, and as a result of the outstanding arrears, the Landlord avers that it was forced to issue a Termination Notice dated 12th March, 2024 and distress for rent arrears of Kshs. 94,000.00. The Landlord averred that it instructed Jogan Dries Auctioneers to effect the distress.



18. The Landlord avers that Tenant has since vacated the premises and it was in the process of procuring another Tenant.
19. The Landlord stated that due to the prevailing economic circumstances it had increased the rent by Kshs. 5,000.00. It noted that the same had been communicated to all the Tenants. Additionally, it stated that the Tenant's claim that rent had been increased by 20% was false and a misrepresentation.
20. The Landlord sought the Tenant's Application dated 4th April, 2024 to be dismissed.

E. Jurisdiction

21. The Jurisdiction of this Honourable Tribunal is not contested by either party and therefore is not in dispute.

F. Issues For Determination

22. Having carefully perused the Pleadings presented before this Honourable Tribunal by the parties. It is therefore my respectful finding that the issues for determination are:
 - a. Whether the Tenant is entitled to the orders sought in his Application dated 4th April, 2024;
 - b. Whether this Honourable Tribunal should set aside and/or vacate the Orders issued on 29th February, 2024; and
 - c. Whether the Landlord is entitled to an Order of Compensation of Kshs. 300,000.00 being unpaid rent, damages and loss of user of premises.

G. Analysis

a. Whether the Tenant is entitled to the orders sought in his Application dated 4th April, 2024;

23. Vide the Application dated 4th April, 2024, the Tenant sought to restrain the Landlord from interfering with his right to peaceful and quiet enjoyment of the suit premises without unnecessary interference from the Landlord and that the Landlord be restrained from arbitrarily increasing the monthly rent.
24. This Honourable Tribunal notes that the Tenant has since vacated the premises
25. On alteration of terms of a controlled tenancy, the Landlord must satisfy two conditions, that is, the notice must be in writing and duration allowed must be at least two months. Section 4 (2) of the Landlord and Tenant Shops Hotels and Catering Establishments Act, Cap 301 Laws of Kenya (hereinafter "Cap 301") provides that:
 - "(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"
26. This Honourable Tribunal appreciates the Notice issued by the Landlord on 23rd February, 2024 increasing the rent from Kshs. 50,000.00 to Kshs. 55,000.00. The Tribunal notes that the Landlord cited the prevailing economic situation and cost of living crisis as the reason for the rental increase.



27. However, for an alteration of terms notice to be valid, the duration given for effect must be two months. Section 4 (4) of the Act provides that:

“No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party”

28. The abovementioned notice was due to take effect in the month of April, 2024. This Honourable Tribunal notes that the Landlord afforded the Tenant a one-month allowance. The time allowance provided is thus inadequate contrary to the provision of Section 4 (4) of Cap 301.
29. Though the Landlord properly issued the notice, the duration allowed was short contrary to the provisions of Section 4 (4). Therefore, the notice issued was improper thus null and void.

b. Whether this Honourable Tribunal should set aside and/or vacate the Orders issued on 29th February, 2024;

30. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -

“ 1.

- (1) Any person considering himself aggrieved— by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason (emphasis added), desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

31. The Court in the case of Republic v Public Procurement Administrative Review Board & 2 others [2018] e KLR held that: -

“Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”

32. The powers of the Business Premises Rent Tribunal are provided by the Cap 301 Section 12(1)(i) of the Act provides that:

“ A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and



without prejudice to the generality of the foregoing shall have power-- vary or rescind any order made by the Tribunal under the provisions of this Act;”

33. A reading of Section 80 of the [Civil Procedure Act](#) Cap 21, Section 12(1)(i) of the Landlord and Tenant Shops Hotels and Catering Establishments Act, Cap 301 Laws of Kenya and Order 45 of the Civil Procedure Rules, 2010 provide for that the power to review orders can be exercised on application of a person and which Application could be based on the three grounds provided. The Courts have further espoused that where an application is grounded on sufficient reason it is for the court to exercise its discretion. On this matter I am guided by the Court decision in *Tokesi Mambili and others vs Simion Litsanga* {2004} eKLR where the court noted that:

“ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.”

34. In light of the above, this Tribunal notes that the Application brought by the Landlord places reliance on the third ground for review provided under Order 45 Rule 1 of the CPR. It is the Landlord’s case that the Tenant misrepresented the facts of the case herein. The Landlord avers that the Tenant did not inform the Honourable Tribunal of his outstanding arrears of Kshs. 204,000.00 and exaggerated the fact that rent had only been increased by Kshs. 5,000.00 which is 10%.
35. In his Application dated 4th April, 2024, the Tenant averred that he did not have any outstanding rent. Additionally, he averred that the Landlord, without any just cause or legal basis locked him out of the premises and had unilaterally increased the rent by 20%. An assessment of the documentary evidence filed, this Honourable Tribunal notes that the Tenant had misrepresented the facts.
36. For that reason and after careful consideration of the facts and pleadings presented to this Tribunal, I find that the Landlord has provided sufficient reason within the meaning of Section 80 of the [Civil Procedure Act](#), Cap 21 and Order 45 Rule 1 of the Civil Procedure Rules.

d. Whether the Landlord is entitled to an Order of Compensation of Kshs. 300,000.00

37. It is trite law that a claim for special damages have to be claimed and strictly proved by evidence. On this I am guided by the decision of the Court of Appeal in *Richard Okuku Oloo v South Nyanza Sugar Co. Ltd* (2013) eKLR where the Court held that:

“ We agree with the learned judge that a claim for special damages must indeed be specifically pleaded and proved with a degree of certainty and particularity but we must add that, that degree and certainty must necessarily depend on the circumstances and the nature of the act complained of.”

38. In the matter herein, the Landlord produced a copy of the statement of rent paid by the Tenant from 1st February, 2023 to 1st May, 2024. The Landlord’s claim for compensation is founded on the unpaid rent, general damages and the loss of a Tenant.
39. This Honourable Tribunal is therefore mandated to establish the amount, if any, of the special damages the Landlord is entitled to be compensated. The Landlord claims Kshs. 300,000.00 as compensation for the losses suffered. Therefore, this Tribunal has to interrogate the extent of the breach of the tenancy to warrant compensation.
40. On the issue of outstanding rent, the Landlord vide Annexure NSA-3 attached to the Application dated 17th May, 2024, provided a copy of the Tenant’s rent statement as at 1st May, 2024. The statement provides the rent paid and the outstanding balance. The balance provided is Kshs. 204,000.00. Though



the outstanding balance has been disputed by the Tenant, he failed to produce any evidence challenging the same. The Statement filed by the Tenant as Annexure PAY-1, PAY-2 and PAY-3 failed to highlight any payment to the Landlord.

41. This Honourable Tribunal, under issue 1, addressed itself on the issue of rent increment in which it invalidated the notice issued by the Landlord. Thus, the outstanding rent for the months of April, 2024 and May, 2024 is Kshs. 50,000.00 and not the Kshs. 55,000.00 claimed by the Landlord.
42. In light of the above, the outstanding rent amount owed by the Tenant and proven by the Landlord is Kshs. 194,000.00.
43. With the foregoing in mind, and after careful consideration of the pleadings and evidence filed thereof, I find that the Landlord is entitled to Kshs. 194,000.00 being the unpaid rent.
44. The Tribunal finds no evidential basis for a claim of damages.

H. Determination And Orders

45. In the upshot, the following orders shall abide:
 - a. The Tenant's Application and Reference dated 4th April, 2024 is hereby dismissed with costs at Kshs. 10,000.00;
 - b. The Landlord's Application dated 17th May, 2024 is hereby partially upheld in terms of prayer 3;
 - c. This Tribunal's Interim Orders issued on 14th May, 2024 are hereby set aside;
 - d. The Rental Increase Notice dated 23rd February, 2024 is hereby declared null and void;
 - e. The Tenant shall pay the Landlord Kshs. 204,000.00 being outstanding rent of Kshs. 194,000.00 and legal costs assessed at Kshs. 10,000.00 of the suit herein made by the Tenant;
 - f. The amount in (e) above to be paid by the Tenant within 60 days of the pronouncement of this Ruling; and
 - g. Reference settled on similar terms.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 27TH DAY OF AUGUST 2024 IN THE PRESENCE OF FREDRICK OTIENO, THE TENANT IN PERSON AND BULOWA FOR THE LANDLORD.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

