



**Muthui v Paris Restaurant Limited & another (Tribunal Case  
E334 of 2024) [2024] KEBPRT 930 (KLR) (10 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 930 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E334 OF 2024  
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER  
JULY 10, 2024**

**BETWEEN**

**FESTUS MUTHUI ..... APPLICANT**

**AND**

**PARIS RESTAURANT LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**DANIEL NDAVI MWANGANGI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A. Dispute Background**

1. The tenant/applicant moved this Tribunal vide a Reference under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301, dated 8<sup>th</sup> March 2024 with a Complaint that the 2<sup>nd</sup> respondent illegally locked the suit premises on 19<sup>th</sup> January 2024 and that the respondents have adamantly refused to re-open the suit premises. In addition, the 2<sup>nd</sup> respondent is accused of having verbally threatened to break into the suit premises to confiscate the tenant's tools of trade before illegally evicting him.
2. The tenant/applicant filed a Notice of Motion under a certificate of urgency dated 8<sup>th</sup> March 2024 seeking for the following orders; -
  - i. That the application be certified urgent
  - ii. That pending the hearing of the application inter-partes, the Tribunal orders the respondent to re-open the suit premises and return the tools of trade back to the suit premises forthwith and in default the applicant be at liberty to break in under the supervision of the OCS Mutomo Police Station.
  - iii. That the court issues interim as well as permanent orders of injunction restraining the respondents from breaking into the suit premises or in any manner interfering with the



tenancy upon hearing the notice of motion ex-parte pending hearing and determination of the application inter-partes and determination of the suit.

- iv. That the O.C.S Mutomo Police Station do ensure compliance of the orders.
  - v. That the court do issue an order compelling the respondents to compensate the applicant for damages for their illegal actions amounting to KES. 50,000.
  - vi. That costs be borne by the respondents.
  - vii. That the court do grant any other orders it deems fit in the circumstances.
3. The application is supported by an affidavit of even date in which the applicant deposes as follows; -
- i. That the applicant has been a tenant at the suit premises running a clinic since 24<sup>th</sup> November 2023 faithfully paying rent of KES. 15,000.
  - ii. That the 2<sup>nd</sup> respondent on 19<sup>th</sup> January 2024 illegally locked the suit premises without justification with the hope of illegally inducing the tenant to vacate.
  - iii. That the respondents have refused to re-open the suit premises despite attempting to resolve the dispute amicably.
  - iv. That the 2<sup>nd</sup> respondent has verbally threatened to break into the suit premises to confiscate the tools of trade and illegally evict the tenant. A screenshot of the conversation is annexed as “FM2”.
  - v. That the tenant has heavily invested in the said business and will suffer irreparable loss and damage unless the orders are granted.
4. On 12<sup>th</sup> March 2024, the court issued orders that the application be served for inter-partes hearing on 11<sup>th</sup> April 2024.
5. The 2<sup>nd</sup> respondent filed a replying affidavit dated 20<sup>th</sup> March 2024 in which he deposes as follows; -
- i. That he is the agent of the 1<sup>st</sup> respondent.
  - ii. That the 1<sup>st</sup> respondent and the applicant entered into a 2-year lease agreement on 24<sup>th</sup> November 2023 at a monthly rent of KES. 15,000 and a 2-months’ deposit of KES. 30,000. A copy of the lease agreement is annexed as “DNM-1”.
  - iii. That the applicant paid their rent up to January 2024 and thereafter defaulted in paying rent for the subsequent months of February and March 2024 respectively.
  - iv. That in view of the continued breach of the lease agreement, the landlord/1<sup>st</sup> respondent instructed the 2<sup>nd</sup> respondent to follow up on the rent arrears for KES. 15,000 as at February 2024 plus outstanding deposit of KES. 20,000 which he was paying in installments.
  - v. That the applicant owed KES. 30,000 in rent arrears as at 20<sup>th</sup> March 2024 plus outstanding deposit arrears of KES. 20,000.
  - vi. That the suit premises were closed by representatives of the Pharmacy and Poisons Board on 31<sup>st</sup> January 2024 for failure to comply with the law. A copy of the notice for closure and photographs of the premises are annexed as “DNM-2” and “DNM-3” respectively.



- vii. That on diverse dates, the applicant acknowledged the outstanding rent arrears and made several unfulfilled promises to settle the rent arrears and outstanding deposit which the applicant never paid. Copies of WhatsApp messages are annexed as “DNM-4”.
  - viii. That following closure of the applicant’s business by the medical licensing authorities, the respondent had no choice but to levy for distress for rent via its agent and close the premises on 19<sup>th</sup> February 2024 until the settlement of arrears.
  - ix. That the 1<sup>st</sup> respondent has not taken away the applicant’s tools of trade from the suit premises.
  - x. That at the time of closure, the tenant was not operating the medical clinic but was operating illegally and rent was accumulating.
6. The 1<sup>st</sup> respondent also filed a replying affidavit dated 20<sup>th</sup> March 2024 in which it is deposed as follows;
- i. That the 1<sup>st</sup> respondent/landlord and the applicant entered into a 2-years’ lease agreement on 24<sup>th</sup> November 2023 at a monthly rent of KES. 15,000 and a 2-months’ deposit of KES. 30,000. A copy of the lease agreement is annexed as “KGM-3”.
  - ii. That the applicant failed to settle the deposit in full and further only paid their rent up to January 2024 and thereafter stopped paying rent.
  - iii. That vide an undated letter, the tenant proposed to settle the outstanding deposit of KES. 30,000 through gradual installments over a period of 3 months together with the monthly rent payable. A copy of the letter is annexed as “KGM-4”.
  - iv. That the premises is a commercial building and the tenant was operating a medical clinic by the name SAS Medical Clinic which was closed by representatives of the Pharmacy and Poisons Board on 31<sup>st</sup> January 2024 for failure to comply with the law. A copy of the notice of closure is annexed as “KGM-5” and a photo of the subject building is annexed as “KGM-6”.
  - v. That the tenant owes the landlord KES. 50,000 being 2 months’ rent for February and March 2024 and outstanding deposit of KES. 20,000. Copies of text message communication dated 15<sup>th</sup> February 2024 are annexed as “KGM-7”.
  - vi. That the tenant acknowledged the outstanding rent arrears via a string of promises to pay the rent arrears and deposit, however the same was not done. Copies of the text message communication dated 29<sup>th</sup> February 2024 are annexed as “KGM-8”.
  - vii. That following the closure of the applicant’s business by the medical licensing authorities, the landlord proceeded to levy distress for rent via its agent and closed the premises on 19<sup>th</sup> February 2024.
  - viii. That the 1<sup>st</sup> respondent has not taken away the tenant’s belongings or tools of trade from the suit premises but has locked the premises awaiting settlement of the arrears.
  - ix. That the 1<sup>st</sup> respondent has not issued any threats to break into the premises to take his equipment.
7. During the hearing on 11<sup>th</sup> April 2024, only the Counsel for the respondents was present. The court issued orders that the matter be disposed of by way of written submissions. At a subsequent mention on 23<sup>rd</sup> May 2024, Counsel for the respondents confirmed that he had filed the respondents’ written



submissions and we note that the tenant was absent again. We shall consider the respondents' written submissions which is dated 6<sup>th</sup> May 2024 as we deal with the issues for determination.

## **B. Issues for determination**

8. The following are the issues for determination; -

- a. Whether the tenant/applicant is entitled to the orders sought in the application dated 8<sup>th</sup> March 2024.
- b. Who shall bear the costs of the application?

Issue (a) Whether the tenant/applicant is entitled to the orders sought in the application dated 8<sup>th</sup> March 2024.

9. The tenant/applicant approached this tribunal seeking for orders to re-open the suit premises as well as temporary and permanent orders of injunction preventing the respondents from interfering with his peaceful occupation at the suit premises.
10. We note that the tenant has not refuted the claims made by the respondents in their replying affidavits which are both dated 20<sup>th</sup> March 2024 even though the tenant/applicant was granted leave to file a further affidavit at the court hearing of 11<sup>th</sup> April 2024.
11. The respondents in their written submissions state that the tenant defaulted in paying rent causing the landlord to take action as promises to pay rent remained unfulfilled.
12. The respondents in their written submissions have relied on the case of *Samuel Kipkori Ngeno & Another v Local Authorities Pension Trust (Registered trustees) & Another* (2013) eKLR and further on the case of *Unga Millers v James Munene Kamau* [2005] eKLR on the effect of failure to file a Reply to Defence:

“But that was not all, for as aforementioned, there was no reply to the appellant's claim that the respondent acted negligently and he was thus to blame. It is trite law that he who does not file a reply to such a defence is deemed to have admitted the said allegations.”

13. In examining whether the orders sought by the Tenant/Applicant are merited, this tribunal shall rely on the locus classicus case of *Giella v Cassman Brown & Company Limited* (1973) E A 358 where the court expressed itself on the conditions that a party must satisfy for the court to grant an interlocutory injunction as follows: -

“Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, 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 convenience.”

14. Upon analysis of the documents filed in this matter, we find that the tenant/applicant does not satisfy any of the conditions required as quoted above for the grant of interlocutory orders of injunction.
15. The Applicant/Tenant has also sought for an order compelling the Respondents to compensate him for exemplary and punitive damages for their alleged illegal and unwarranted action amounting to KES. 50,000. We find that the tenant/applicant has not adduced any substantive evidence before this Tribunal to prove his allegations. The respondents in their replying affidavits have also sworn that they



have not taken away any of the tenant's belongings from the suit premises as alleged by the tenant/applicant.

16. Due to the allegations of non-payment of rent and other arrears by the tenant/applicant and failure of the tenant/applicant to prosecute the matter, the respondents state in their written submissions that they seek to terminate the tenancy. This tribunal cannot grant orders of termination without following due process in accordance with Section 4 (1) and (2) of [Cap 301](#), Laws of Kenya which provides as follows; -



<p>“4.</p>	<p>Termination of and alteration of terms and conditions in controlled tenancy</p> <table border="1" data-bbox="858 309 1386 1711"> <tr> <td data-bbox="858 309 1123 1102">(1)</td><td data-bbox="1123 309 1386 1102"> <p>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.</p> </td></tr> <tr> <td data-bbox="858 1102 1123 1711">(2)</td><td data-bbox="1123 1102 1386 1711"> <p>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.”</p> </td></tr> </table>	(1)	<p>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.</p>	(2)	<p>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.”</p>
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17. In view of the above provision, the tribunal shall order that the landlord/1<sup>st</sup> respondent shall be at liberty to issue a notice to terminate tenancy in accordance to Cap 301 Laws of Kenya.

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

18. As regards costs, the same are in the 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 to the respondents.

**C. Orders**

19. In conclusion, the following final orders commend to us; -
- The application and reference dated 8<sup>th</sup> March 2024 are hereby dismissed with costs.
  - The tenant/applicant shall pay the landlord/1<sup>st</sup> respondent all the arrears due within 7 days hereof, failure to which the landlord shall be at liberty to proceed to recover the same using legal means.
  - The landlord is at liberty to issue a notice to terminate tenancy in the prescribed form in accordance with Section 4(2) of [Cap 301](#), Laws of Kenya.
  - Costs of KES. 30,000 to the respondents.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 10<sup>TH</sup> JULY 2024**

**HON. JOYCE AKINYI OSODO**

**PANEL CHAIRPERSON**

**HON GAKUHI CHEGE**

**MEMBER**

In the absence of Parties

