



**Walnut Bakers Ltd v Mohsen (Tribunal Case E196 of 2023)  
[2024] KEBPRT 847 (KLR) (26 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 847 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E196 OF 2023  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
JUNE 26, 2024**

**BETWEEN**

**WALNUT BAKERS LTD ..... TENANT**

**AND**

**ALWY MOHSEN ..... LANDLORD**

**RULING**

1. The tenant filed a reference dated 17<sup>th</sup> August 2023 complaining that the landlord was harassing it by locking the entrance to its business premises without any justifiable reason. The landlord is also accused of demanding that the tenant vacates the premises although he was not in breach of the terms of tenancy and without issuance of a termination notice.
2. The tenant simultaneously filed a motion of even date seeking for restraining orders against the landlord from denying it access to the suit premises. The application is predicated upon the grounds on the face thereof and the supporting affidavit of Oginga Randiki who is the tenant's Managing Director wherein it is deposed that the tenant runs a bakery business in Voi Town in the landlord's premises.
3. The tenant deposes that in May 2023, the bakery machines owned by the landlord were attached on account of a debt owed by him despite the tenant having paid all the due rent. The tenant therefore embarked on buying new machines to replace the attached ones.
4. However, the landlord started demanding that the tenant vacates the business premises and locked the same without reference to the Tribunal by placing a padlock on the entrance thereto thereby denying access to it.
5. Interim orders were granted on 9<sup>th</sup> November 2023 restraining the landlord from denying the tenant access to the premises pending hearing inter-partes on 6<sup>th</sup> December 2023. The tenant was also directed to serve the application upon the landlord.



6. The application is opposed through the replying affidavit of the landlord sworn on 4<sup>th</sup> December 2023 in which he deposes that the tenant agreed to lease the premises in February 2023 at a monthly rent of Kshs 140,000/= payable in advance and the tenant was in addition required to pay a deposit of Kshs 140,000/= which it failed to do. As at August 2023, the tenant had paid Kshs 260,000/= and was in arrears of Kshs 580,000/=.
7. The tenant also accumulated an electricity bill of Kshs 296,129/= as a result of which Kenya Power & Lighting Company disconnected power to the premises. The tenant stopped operations in June/ July 2023 whereupon the landlord closed the premises on discovery that the tenant was no longer in operation. The landlord deposes that the tenant left the premises voluntarily without notice and had come to court with unclean hands as he was in rent arrears and in breach of the tenancy agreement.
8. On 29<sup>th</sup> January 2024, this Tribunal directed its Rent Inspector to visit the suit premises to confirm whether the same was locked and if so by whom within 30 days. The visit took place on 28<sup>th</sup> February 2024 and a report was consequently filed to the effect that the tenant had unhindered access to the demised premises.
9. The landlord filed a further affidavit sworn on 4<sup>th</sup> April 2024 pursuant to leave granted on 1<sup>st</sup> March 2024 wherein he tabulated all the rent payments made by the tenant from inception of the tenancy showing that as at April 2024, the tenant owed him Kshs 1,280,000/= as per the rent account statement marked “AMA-2”. He also had accumulated electricity bills of Kshs 296,129/= as per the Kenya Power bill statement marked “AMA3”.
10. The tenant is therefore accused of failure to disclose all material facts and of being in breach of the tenancy agreement at the time it obtained the ex-parte court orders in this matter. The tenant had free access to the premises but had denied the landlord his rental income.
11. In the premises, this Tribunal is being called upon to determine the following issues:-
  - a. Whether the tenant is entitled to the reliefs sought in the reference and application dated 17<sup>th</sup> August 2024.
  - b. Whether the tenant owes rent arrears and utility bills to the landlord and if so whether the latter is entitled to recover the same.
  - c. Who is liable to pay costs?
12. The tenant in this case moved this Tribunal by way of a reference and application dated 17<sup>th</sup> August 2023 under Section 12(4) of Cap. 301, Laws of Kenya in which it essentially sought for injunctive reliefs against the landlord.
13. The principles upon which an order of injunction can be granted were settled in the celebrated case of *Giella Vs Cassman Brown & Co. LTD* (1973) E.A 358 wherein it was held that an applicant must demonstrate a prima facie case with a probability of success; an applicant ought to also demonstrate that he will suffer irreparable loss or injury which cannot be atoned by monetary damages unless the injunction order sought is granted and if any of the foregoing condition is in doubt; whether the balance of convenience is in favour of granting the orders sought.
14. In the case of *Kyangavo Vs Kenya Commercial Bank LTD & Another* (2004) eKLR, at page 13, the Superior Court had the following to state on the obligations of an applicant for injunction;

“Secondly, the injunction sought is an equitable remedy. He that comes to equity must come with clean hands and must also do equity. The conduct of the plaintiff in this case betrays



him. It does not endear him to equitable remedies. He admitted in this Court, quite frankly, that since leaving the employment of the bank over four years ago, he has never paid a cent towards redemption of the loan. He admits that he is in default, and yet he is also in possession. He can't have it both ways. Either he pays the loan, or allows the bank to realize its security. He who comes to equity must fulfill all or substantially all his outstanding obligations before insisting on his rights. The plaintiff has not done that. Consequently, he has not done equity. In the hands of the plaintiff, a permanent injunction would wreak havoc to the first defendant, and that would be inequitable. While chargees are enjoined by law to follow the laid down procedures for the realization of their security, the Courts must not at the same time be converted into a haven of refuge by defaulters. Even lenders and charge have their own rights.” (emphasis added).

15. Although the tenant has been accused of failure to pay rent and electricity bills in respect of the suit premises with the landlord presenting details of the rent payments and electricity account statement from inception of the tenancy, the tenant has totally failed to rebut the said evidence. We therefore have no reason therefore to disbelieve the landlord and find that the tenant has been unable to establish a prima facie case with a probability of success.
16. In the case of Samuel Kipkori Ng'eno & another Vs Local Authorities Pension Trust (registered Trustees) & another (2013) eKLR at paragraphs 9 & 12, the Superior Court had the following to state;
  - “9. A tenant's first and main obligation is to pay rent as and when it becomes due, for the landlord has the right to an income from his investment. Why would a tenant allow himself to fall into such huge arrears of rent”.
  - .....
  12. The temporary injunction sought in the present application is an equitable remedy at the court's discretion. He who comes to equity must come with clean hands. A tenant who is in huge arrears of rent is undeserving of the court's discretion. The court cannot be the refuge of a tenant who fails to meet his principal obligation of paying rent as and when it becomes due.”
17. Guided by the foregoing decisions of the Superior Court, we have no hesitation in finding that the tenant is undeserving of the injunction orders sought having failed to perform his principal obligation to pay rent and utility bills in respect of the suit premises. The landlord is entitled to use all lawful means to recover the outstanding rent and utility bills against the tenant.
18. As regards costs, the same are at this Tribunal's discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We have no reason to deny costs to the landlord.
19. In conclusion, the following final orders commend to us in this matter under Section 12(4) of Cap 301;
  - a. The tenant's reference and application dated 17<sup>th</sup> August 2023 are hereby dismissed with costs to the landlord.
  - b. The interim orders issued herein are hereby discharged/set aside.
  - c. The landlord is entitled to recover all outstanding rent and utility bills arrears against the tenant using lawful means.
  - d. The tenant shall pay costs of this case assessed at Kshs 30,000/= to the landlord.



It is so ordered.

**DATED, SIGNED & VIRTUALLY DELIVERED THIS 26<sup>TH</sup> DAY OF JUNE 2024**

**HON. GAKUHI CHEGE - PANEL CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON. JOYCE A. OSODO - PANEL MEMBER**

Ruling delivered in absence of both parties

