



**Opiyo v Njuguna (Tribunal Case E1080 of 2022)
[2024] KEBPRT 691 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 691 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1080 OF 2022
CN MUGAMBI, CHAIR
APRIL 26, 2024**

BETWEEN

GILBERT OPIYO TENANT

AND

FRANK NJUGUNA LANDLORD

RULING

1. By its Ruling of 11.9.2023, the Tribunal held that it had the powers under Section 12(L) of [Cap 301](#) to investigate and make findings in respect of the Tenant's prayer for compensation for losses incurred at the termination of his tenancy. These proceedings are therefore in respect of the Tenant's claim for compensation as set out at prayer 6 of the Application dated 17.11.2022.

The Tenant's case

2. The Tenant's evidence in support of his case may be summarized as follows:-
 - a. The Tenant sought to and was allowed to rely on his statement and the list of documents dated 28.11.2023.
 - b. That he was the Landlord's Tenant on a lease for a period of five (5) years since June 2021 at an agreed rent of Kshs. 60,000/= but which was later reduced to Kshs. 30,000/= per month. The agreement was verbal.
 - c. That the Landlord illegally took over the premises in October, 2022 even as the parties had agreed that the rent arrears of Kshs. 200,000/= would be paid in January.
 - d. That the Tenant only agreed to owing the Landlord Kshs. 120,000/= and not Kshs. 200,000/=.
 - e. That the Landlord was served with the court orders issued on 14.12.2022 on 17.12.2022 at the offices of the OCS but he said that he could not obey the orders as he had already given out



the premises to another tenant but according to the Tenant, it is actually the Landlord who was operating the premises.

- f. That the Landlord took over the Tenant's business premises when the Tenant travelled to Mombasa. It is the Tenant's evidence that he did not take anything from the suit premises including his stock.
 - g. That the Landlord has not filed any claim against the Tenant and the Tenant denies owing the Landlord the Kshs. 340,000/=. That the Landlord alleges as owed.
 - h. That the Tenant improved the premises with the consent of the Landlord by painting the walls, installing water from the river to the premises, completely overhauling the electricity systems, plumbing works in the rooms and construction of gazebos and the garden.
 - i. The Tenant estimated the cost of the renovations to be about Kshs. 600,000/=. He has attached a quotation from Lyton Limited in support of his expenses for Kshs. 408,000/=. The Tenant has also attached receipts for the total amount claimed in the sum of Kshs. 1,800,000/=. The Tenant further testified that the Landlord is still using the Tenant's pump.
3. Upon cross examination by Counsel for the Landlord, the Tenant's responses may be summarized as follows:-
- a. The lease agreement is signed between Frank Mwangi Njuguna, Gilbert Opiyo and Christine Wendo Opiyo. Christine is the spouse of the Tenant.
 - b. That the Tenant confirms that the handwritten additions to the agreement form part of the agreement between the parties.
 - c. The Tenant confirms that there was no written document to show that the Landlord approved the renovations.
 - d. That the Tenant fixed water by purchasing water pipes as the premises do not have any company water.
 - e. That the Tenant's pump is still at the hotel.
 - f. That although the inventory was taken by one Mr. Frank, it is not counter signed by the said Frank.
 - g. That the electric hot pot was for use in the kitchen and the Tenant has attached an invoice for it which the Tenant equates to a receipt.
 - h. That the Tenant started the business in the year 2021 though the invoice from Davis and Shirtlift is for 9.7.2016.
 - i. That the Tenant does not have an electronics' certificate for the electric works done.
 - j. That the Tenant presently only admits owing the Landlord Kshs. 60,000/= though he has no evidence of the payments he alleges to have been making to the Landlord.
 - k. That the Tenant has not produced the CR12 FORM for Lyton Limited but he insisted it is a registered company.
 - l. That the report from Lytons Limited amounts to a Quantity Surveyor's Report.
 - m. That the letter from Lyton Limited is not stamped by Lyton Limited.



- n. That when the Tenant went to the OCS Nguliba police station, the OCS told him that he was unable to execute the orders of court.
4. Upon re-examination, the Tenant stated that the Landlord informed him that the premises had been taken over by another Tenant and that the Tenant's goods had been sold.
5. The Tenant further stated that the Lyton quotation was signed and addressed to him and the subject matter was the White Stallone Hotel.
6. Further, the Tenant stated that although the Landlord's approval for the renovations was not in writing, the Landlord never stopped the said renovations.
7. The Tenant further stated that he paid the monthly rent of Kshs. 30,000/= from June 2022 to the time the Landlord took over the hotel and the Landlord accepted the reviewed rent.
8. The inventory for White Stallone Hotel is not signed.

The Landlord's case

9. The Landlord adopted as his evidence his witness statement dated 20.11.2023 and further produced as his exhibit 1-4, the documents in his list of documents of even date. His evidence may be summarized as follows;-
 - a. That the agreed rent for the suit premises was Kshs. 60,000/= and there was never an agreement for the reduction of rent to Kshs. 30,000/=.
 - b. That the Tenant did not carry out any renovations and the Landlord never authorized any.
 - c. That the premises had electricity and water before the Tenant took possession.
 - d. That the Tenant owed rent in the sum of Kshs. 340,000/=.
 - e. That the Tenant left the rent premises voluntarily.
 - f. That the Landlord does not have any property belonging to the Tenant.
 - g. That the Tenant ought to be ordered to pay the rent arrears of Kshs. 340,000/=.
10. Upon cross examination, the Landlord's responses may be summarized as follows;-
 - a. That his claim for rent has not been particularized and that he does not have a rent statement and cannot therefore substantiate his claim for rent.
 - b. That he has not counter claimed for the rent arrears.
 - c. That the Tenant vacated the suit premises in September, 2022 with accumulated rent arrears of Kshs. 340,000/=.
 - d. That the Tenant never turned up for a joint valuation of the premises.
 - e. That the lease agreement between the Landlord and his new Tenants, EMMA & HANNA is not fictitious, these two left the premises after six months.
 - f. The Landlord had no evidence that his new Tenant indeed paid him rent of Kshs. 40,000/= per month.
11. On re-examination, the Landlord stated that the OCS indicated that he could not execute the court orders because the Tenant had vacated voluntarily.



12. The Landlord stated further that he does not hold any property belonging to the Tenant who left voluntarily and left the keys to the premises with the watchman.

Analysis and determination

13. The only issue that arises for determination in this Reference is whether the Tenant is entitled to the compensation that he seeks from the Landlord. The Tenant has stated in his statement dated 28.11.2023 that he had invested Kshs. 1,500,000/= in the suit premises before the Landlord illegally took over the premises. The Tenant's claim as I understood it, is for compensation for improvements and renovations upon the suit premises and for the tools of trade and stock that he allegedly left in the premises when the Landlord allegedly took over the premises. the Landlord having denied all these allegations, the burden of proving the losses lies squarely on the Tenant.
14. The improvements that the Tenant alleges to have carried out in the suit premises are the ones costed in the document addressed to the Tenant by Lyton Limited. The letter/document by Lyton Limited bears the name of William Khamatidesignated as the project's director for Lyton Limited. The document is not signed by the said William Khamati. The receipts from the Tenant in proof of the expenditure for the renovations are not clear and it is not possible to coherently pair them with the document from Lyton Limited.
15. In the lease agreement dated 18.5.2021 and annexed by the Tenant to his list of documents also produced as the Tenant's exhibit No. 1, at the bottom of page No. 3, there is an additional clause handwritten and which provides as follows:-

“NOTE Any development/improvement in the Hotel to be approved by the leasor.”

The Tenant in his evidence admitted that this handwritten addition to the lease agreement formed a part of the covenant between the parties. On the Tenant's own admission, he did not have any evidence that the Landlord consented to the improvements that the Tenant allegedly carried out in the premises.

The Tenant's response to this lack of consent and/or the approval of the Landlord is that the Landlord never objected to the improvements. I do not think this is a sufficient answer to the allegation that the Landlord never consented to the improvements especially where it flies on the face of express provisions of the lease agreement between the parties.

16. It is my view that the Tenant required the written consent of the Landlord to carry out any improvements on the suit premises and in the absence of any such consent, then the Landlord cannot be compelled to pay for improvements done contrary to the express terms of the lease agreement between the parties. I have further not seen any written request by the Tenant to the Landlord to be allowed to carry out any improvements on the suit premises.
17. The Tenant's claim for the stock, tools of trade and the equipment he allegedly left in the suit premises is supported by the “White Stallion Inventory List” produced as exhibit No. 2 by the Tenant. Although the Tenant stated in his evidence that the inventory was prepared by the Landlord, the document produced by the Tenant is not signed by any of the parties. The Tenant admits as much and in the circumstances, the inventory, unsigned and uncertified is of no evidentiary value and I do not find the Tenant's claim for the stocks and equipment/tools of trade as proved.
18. I also notice that the receipts produced from the beer distributors are for the year 2021 and it is inconceivable that beer stocks would last in the premises for the year until the Landlord allegedly took over the premises.



19. The Tenant has stated in his evidence that he was pumping water from the river using his own pump. The Landlord on his part has stated that at the time the Tenant took over the premises, there was water and electricity. I do note that whereas the tenancy commenced in the year 2021, the Tenant has produced an invoice from Davis & Shirtlift dated 9.7.2016 as evidence that he had bought the pump for use in the premises. I am unable to agree with the Tenant when he argues that the invoice from Davis & Shirtlift amounts to a receipt for the payment of the pump. Invoices are issued prior to the customer sending the payment whereas a receipt is issued after the payment has been made. The invoice acts as a request for payment and the receipt acts as proof of payment. In these circumstances, the invoice produced by the Tenant is no proof that he paid for and therefore obtained the pump from Davis & Shirtlift.
20. Consequently, it is my finding that the Tenant has failed to prove his claims against the Landlord and the same are dismissed.
21. In view of the finding earlier in this Reference that the tenancy herein was not terminated legally, I will order that each party will bear their own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF APRIL, 2024.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Gatonge for the Landlord and in the absence of the Tenant and Counsel.

