



**Njenga t/a Epekamaga Enterprises v Estate of the Late Kinuthia Makumi & another
(Tribunal Case E062 of 2023) [2023] KEBPRT 636 (KLR) (25 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 636 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E062 OF 2023
A MUMA, MEMBER
SEPTEMBER 25, 2023**

BETWEEN

SIMON NJENGA T/A EPEKAMAGA ENTERPRISES APPLICANT

AND

ESTATE OF THE LATE KINUTHIA MAKUMI 1ST RESPONDENT

NDUATI WAMAE & ASSOCIATES CO LTD 2ND RESPONDENT

RULING

A. Parties & Their Representatives

1. The Applicant, Simon Njenga is the tenant occupying the Premises located at Nairobi, along River Road that is the subject matter of the present suit. (hereinafter “the tenant”).
2. The Applicant appears in person in these proceedings.
3. The 1st Respondent herein is the Landlord of the Premises that is the subject matter of the present suit. (hereinafter “the Landlord”).
4. The Respondents are represented by the Firm of C. Kimathi & Company Advocates (candmkimathi@yahoo.com).

B. Dispute Background

5. On 19th January 2023, the Tenant filed a refence and an application seeking several orders including; that the Court be pleased to order the Respondents to re-open the Applicant’s premises, an interim order of injunction preventing the Respondents from harassing the Tenant pending the hearing and determination of the application and the suit, compensation of KShs. 100,000.00 and costs of the suit.



6. The Court, having considered the Tenant's reference and Application, issued interim Orders dated 25th January 2023 ordering the Respondents to re-open the Tenant's premises pending the hearing of the application inter partes and scheduled the hearing of the same for 9th February 2023.

C. Claim and Defence

7. In the Reference and the Application dated 19th January 2023, the Tenant claims that on 11th January 2023, the Agent illegally locked his premises in his absence and without prior notice.
8. He claims that the closure has led to loss of revenue as most of his clients have demanded a refund of their moneys while others have threatened to take legal action against him.
9. The Tenant states that there are no outstanding rent arrears and that the Respondents have continuously failed to give him a justifiable reason for locking his business premises.
10. In their Replying affidavit dated 7th February 2023 the Respondents state that the Applicant is misleading the Court and that they had locked the suit premises for the reason that the Applicant had sub-let the said premises to Susan Wambui Muchiri without their consent, breaching the tenancy rules.
11. The respondents deny the allegation that the Applicant has lost revenue as at the time of closure, the Applicant had vacated the premises and sub-let it.
12. Further, it is the Respondents' case that they availed the Applicant an opportunity to regularize Susan Wambui's tenancy at their offices but the Applicant failed to show up and instead, chose to seek the intervention of this Court.

D. Issue for Determination

13. It is the contention of this Tribunal that the sole issue that falls for determination is:
 - i. Whether there exists a tenancy relationship between the Tenant and the Landlord
 - ii. Whether the Tenant is entitled to compensation for loss of business

E. Analysis and Determination

Whether there exists a tenancy relationship between the Tenant and Landlord

14. The existence of a tenancy relationship is the basis for the exercise of the jurisdiction of this Court. It is therefore prudent for the Court to first determine whether there exists a tenancy relationship between the Tenant and the Landlord.
15. It is noteworthy that the tenancy herein is a controlled tenancy within the meaning of Section 2 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Cap 301 Laws of Kenya.
16. This is for the reason that the Tenant has been paying rent to the Landlord since taking over the premises from his father in 1998.
17. However, the Landlord in his submissions dated received rent for the said premises from Susan Wambui Muchiri on 15th December 2022 and on 12th January 2023 as evidenced by the mpesa records.
18. In the circumstances, the Landlord presumed that the Tenant herein had sublet the premises to her and therefore, that the tenancy between him and the Tenant had determined for breach of the terms of the tenancy.



19. In a further Affidavit dated 24th February 2023, the Tenant claims that Susan Wambui Muchiri is his business partner as they have expanded their business requiring them to keep track of their expenses including electricity and hence the request to have the electricity meter registered in the name of Susan Wambui.
20. Save for an agreement to purchase used equipment dated 16th November 2022, there is no further evidence to demonstrate that the Tenant and Susan Wambui were in deed business partners and hence an explanation as to why Susan Wambui was now paying rent for the suit premises.
21. Be that as it may, it is evident that Section 4 of the Landlord and Tenant (Shops, Hotels & Catering Establishment) Act Cap 301 Laws of Kenya lays down clearly and in detail, the procedure for the termination of a controlled tenancy.
22. The Landlord is required to issue a notice of termination to the Tenant in the prescribed form and that the notice shall not take effect earlier than two (2) months from the date of receipt by the Tenant. Further, the notice must specify the grounds upon which the termination is sought and ask the tenant to indicate in writing whether or not they will comply with the said notice.
23. The Landlord failed to comply with the Section 4 (2) of Cap 301. Therefore, I find that locking the suit premises was indeed illegal.

Whether the Tenant is entitled to Compensation for loss of business

24. Section 12 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Cap 301 Laws of Kenya gives this Court the power to, inter alia, award compensation for any loss incurred by a tenant on termination of a controlled tenancy.
25. The Tenant claims that he incurred loss of business during the period the business premises was locked and has attached a Local Purchase Order whose value is KShs. 100,000.00.
26. The power to award damages is discretionary. However, this power must be exercised judiciously and in accordance to the law. Damages may be in the form of general damages or special damages. The Tenant has specified that the amount sought is from a Local Purchase Order to supply calendar leaflets to Sturgeon Enterprises.
27. It is trite Law that special damages have to be specifically pleaded and strictly proved by evidence. The Local Purchase Order does not however show how the Tenant failed to supply the said calendar leaflets, nor does it provide proof of any refund to Sturgeon Enterprises for failure to supply the said goods.
28. This Court is guided by the decision of the Court of Appeal stated its position on specific damages in the case of Richard Okuku Oloo vs South Nyanza Sugar Co. Ltd [2013] eKLR as follows:

“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.”
29. From an analysis of the documents filed by the Tenant, I note that the Tenant has not provided enough evidence to show that he incurred the loss of business as claimed.



F. Orders

30. The upshot is that the Tenant's reference and Notice of Motion Application dated 19th January 2023 be and is hereby compromised as follows;
- a. Reference to be set down for hearing on 31st October 2023
 - b. Susan Wambui Muchiri is hereby added as an Interested Party. Consequently, the Landlord and Tenant to serve her.
 - c. Landlord to share terms of new lease and Statement of accounts of the period between March 2022 to December 2022 and the Interested Party to file statement of accounts from January 2023 to date within 14 days.
 - d. Interested Party and Tenant to respond to the statement of account to respond in 14 days.
 - e. Tenant to pay throw away costs of KShs. 10,000.00 before the hearing date.
 - f. Interested party Tenant to continue paying rent as and when it falls due of Kshs 40,000/- on or before the 5th of Every month.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by Hon. Muma this 25th day of September 2023 in the Presence of Muthungu h/b for Kimathi for the Landlord and No Appearance for the Tenant.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

