



**Mwangi v Nderitu (Tribunal Case E070 of 2022)
[2023] KEBPRT 1300 (KLR) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1300 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E070 OF 2022
CN MUGAMBI, CHAIR
JULY 31, 2023**

BETWEEN

DAVID KAMAU MWANGI TENANT

AND

JANE NDERITU LANDLORD

RULING

1. The Tenant's notice of motion dated 8.2.2023 seeks orders that the Respondent be restrained from interfering with the Tenant's peaceful occupation of the suit premises, that the landlord be ordered to reconnect electricity and return the Tenant's items namely; weighing scale machine, electrical sub meter and accounting books of records. The tenant further seeks that the landlady compensates her for the eight months the Applicant has been out of business.

The Applicant's Depositions

2. The affidavit of the tenant in support of his application may be summarized as follows hereunder:-
 - a. That on 3.11.2023, the Tribunal ordered that the Respondent to re-open, the suit premises, the Respondent duly re-opened the suit premises but disconnected electricity.
 - b. That the Respondent also confiscated the Tenant's weighing scale machine, electrical sub meter and accounting books of records with a view to compel the Applicant to vacate the suit premises.
 - c. That the Tribunal ought to restrain the Respondent from harassing or evicting the Applicant from the suit premises.



The Landlord's Depositions

3. The replying affidavit sworn by Derick Aladi an employee of the Respondent may be summarized as follows:-
 - a. That he is aware that the Tenant runs a makeshift butchery next to the Respondents wines and spirits business and that the tenant pays to the Respondent Kshs. 8,000/= per month for the space he occupies.
 - b. That the last time the tenant fully operated/worked for a full day at his butchery was on 20.5.2022 before he filed this case.
 - c. That on 21.5.2022, the Claimant attempted to assault the Respondent leading to criminal proceedings in Nakuru CM CR Case No. E910 of 2022 filed against the Tenant.
 - d. That on 2.10.2022, the Tenant staged a robbery at his own business premises in the company of third parties.
 - e. That the deponent took away the tenant's weighing machine to prevent the same from being stolen after the tenant broke into her own premises.
 - f. That on 3.11.2022 the court granted the tenant access to the suit premises but the tenant has not appeared at the suit premises and the place is now dirty with remnants of the tenant's business.
 - g. That the state of the tenant's premises is chasing away the Respondent's customers.
 - h. That the tenant has opened another butchery elsewhere and has lost interest in the suit premises.
4. The only issue that arises for determination is whether the tenant is entitled to the orders sought in his application.
5. The tenant's application dated 26.5.2022 was allowed on 3.11.2022 in terms of prayer 2 and 5 thereof. That is to say, that the Respondent was ordered to re-open the suit premises unconditionally and the tenant was at liberty to break into the same if the landlord failed to obey the orders to re-open. The tenant was on 20.2.2023 granted all the prayers sought in his application dated 8.2.2023 save for the prayer seeking compensation. The landlord has admitted to having taken possession of the tenant's weighing machine and makes no comment or response on the other items listed by the tenant. I think it is fair that the said items, which the landlord does not deny being in possession of, be returned to the tenant.
6. The landlord has not denied in her affidavit that she has disconnected the tenant's electricity, I would have granted this order if the tenant was in the premises. As things stand, the landlady has deposed that the tenant has, despite the court orders issued in his favour, failed to take up the premises which remain closed.
7. I have in mind the complaint which the tenant filed at the Tribunal which was to the effect that the landlady had locked the tenant's business premises without prior notice. This complaint was fully dealt with by the court's ruling of 3.11.2022 when the court granted the tenant access to the premises. The tenant has not filed any other complaint.
8. I am of the view that the tenant cannot continue making applications concerning the suit premises while he refuses to access the same even after the court has granted him access, it is an abuse of the court



process. As at now, I will only order that the landlord returns the tenant's items, namely; the weighing scale machine, the electoral submeter and the tenant's books of accounts whenever the tenant will turn up to collect the same.

9. From the record, I also note that the tenant has been severally ordered to pay rent for the suit premises. On 22.3.2023, the court ordered the tenant to pay the February and March rent failing which the orders issued on 20.2.2023 would automatically lapse. On 20.4.2023, the counsel for the Respondent informed the court that the tenant had not paid the rent as ordered and that he had vacated the premises. In these circumstances, and in view of the court orders of 22.3.2023, the orders issued in favour of the tenant stood discharged.
10. The relationship between the parties herein seems to be strained and violent, the landlord though embroiled in this unfortunate scenario, has not taken any steps to terminate the Applicant's tenancy as per the strict provisions of Cap 301. I can therefore do no more than deal with the tenant's application as filed.
11. I will in the circumstances make the following orders:-
 - a. That the landlord/Respondent is hereby ordered to return the tenant's weighing scale machine, electrical submeter and the tenant's book of accounts.
 - b. That the tenant will continue to access the premises as per the orders issued on 3.11.2022.
 - c. That the landlord/Respondent is hereby granted leave to levy distress against the tenant for rent (if any is outstanding) to date.
 - d. That the prayer for compensation is declined.
 - e. Each party shall bear their own costs.

HON. CYPRIAN MUGAMBI - CHAIR PERSON

31.07.2023

RULING DATED, SIGEND AND DELIVERED VIRTUALLY THIS 31ST DAY OF JULY 2023.

In the presence of;

Mr. Mwenda for the Respondent

David Kamau Mwangi- Tenant in person

