



**Njagi v Njoroge & 2 others (Tribunal Case E723 of 2024)
[2024] KEBPRT 1544 (KLR) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1544 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E723 OF 2024
P MAY, MEMBER
OCTOBER 18, 2024**

BETWEEN

RHODAH WANGARI NJAGI APPLICANT

AND

SAMUEL NJOROGE 1ST RESPONDENT

FAMILY WINGS CONSULT 2ND RESPONDENT

ISAAC WEKESA 3RD RESPONDENT

RULING

1. The application before me is the tenant's notice of motion dated 3rd July, 2024 in which the tenant sought for orders of temporary injunction against the respondents. The application is premised on the grounds set out on the face of the application and the further grounds elucidated in the supporting affidavit sworn on an even date.
2. The application was opposed by the landlord vide the replying affidavit sworn on 26th July, 2024. The tenant filed a further affidavit on 12th August, 2024 in response to the contents of the replying affidavit. The parties elected to canvass the application by way of written submissions.
3. The tenant stated that she had been in occupation of the demised premises since August, 2020. She stated that she had been paying rent as when it fell due and that the respondents had threatened to unlawfully evict her. This she said was despite the fact that she had undertaken renovations to a tune of Kshs. 400,000/-. She stated that the respondents had caused damage to her reputation and occasioned her losses.
4. The landlord in opposing the application denied that they had been harassing the tenant and dismissed the application for being frivolous and vexatious. He stated that he had received a notice from the



county government requiring them to undertake renovations urgently. It was on this basis that he informed the tenant about the need to undertake renovations.

5. The Tribunal has read and considered the instant Application, Affidavits and the relevant provisions of law and finds that the issue for determination is whether the Applicant has established the threshold for grant of interlocutory orders sought.
6. The threshold for grant of interlocutory orders was set out in the case of; *Giella Vs Cassman Brown* (1973) EA 358 and was also reiterated in the case of; *Nguruman Limited versus Jan Bonde Nielsen & 2 others* [CA No 77 of 2012](#) (2014)eKLR, where the Court of Appeal held that;

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to

- (a) establishes his case only at a prima facie level,
- (b) demonstrates irreparable injury if a temporary injunction is not granted and
- (c) allay any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction interlocutory or permanent. it is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially.”

7. Therefore, it is not in doubt that for the Tribunal to find that the Applicant is entitled to the injunctive orders sought, the Tenant has to prove all the three principles.
8. Has the Tenant/Applicant therefore established that she has prima facie case? In the case of; *Mrao Ltd Vs First American Bank Of Kenya Ltd* (2003) eKLR, the Court of Appeal gave a determination on a prima facie case. The court stated that:

“In civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

9. It is not in doubt that the Tenant is in occupation of the demised property and therefore has interest over the said property. The landlord is equally in agreement. The tenant has therefore established a prima facie case. She has been on the demised premises for a period of 4 years hence has established goodwill.
10. The Tenant brought to the attention of the Tribunal that the landlord had defied the order issued on 3rd July, 2024. She indicates the landlord proceeded with the said renovations. The landlord has not denied this nor adduced evidence on the extent of the renovation to undertaken. The landlord has only relied on a brief letter written by the ward administrator and has not adduced any inspection report which informed the communication on by the county government. Further the landlord has not produced any permit sought for him to commence the renovations.
11. Having made the above findings, the application is allowed in terms of prayers 4,5 and 6 with no orders as to costs.
12. That the Complaint is settled in similar terms.



DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF OCTOBER, 2024.

HON. PATRICIA MAY - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

