



**Fabian Investment Limited v Deveer Developers Limited (Tribunal Case  
E818 of 2023) [2024] KEBPRT 783 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 783 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E818 OF 2023  
N WAHOME & JOYCE MURIGI, MEMBERS  
MAY 23, 2024**

**BETWEEN**

**FABIAN INVESTMENT LIMITED ..... TENANT**

**AND**

**DEVEER DEVELOPERS LIMITED ..... LANDLORD**

**RULING**

1. This is a Ruling on the Tenant/Applicant's Application dated 20.2.2024. It was brought to court under certificate of urgency of even date and was said to be grounded on Section 12(1)(i) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) (Cap 301) hereinafter referred to as "the Act".
2. The reliefs sought in the Application were the following:-
  - i. Spent
  - ii. That the Honourable Tribunal be pleased to stay, set aside and/or suspend the enforcement and/or execution of the orders issued on the 19.2.2024 arising therefrom pending the hearing and determination of this Application.
  - iii. That the Reference dated 22.8.2023 be reinstated back and fixed down for hearing.
  - iv. That the status quo be maintained pending the hearing of this Application.
  - v. That the costs of this case be provided for.
3. The Applicant in the supporting affidavit sworn on the 20.2.2024 indicated that he had internet connectivity issues as he was at Mai Mahiu on the date of hearing which was 19.2.2024. When he was able to get through to the court, it was already 10.30am and his Reference dated 22.8.2023 had



been dismissed for want of attendance. He therefore sought that the same be reinstated as internet connectivity were factors beyond his control.

4. On his part, the Respondent denounced the Application as yet another tactic to delay the matter and cause confusion so as not to pay rent. There were already two other matters in the courts being BPRT Case No. 786 of 2023 and Milimani Commercial Courts Misc. Civil Application No. 350 of 2024 before the Magistrates court.
5. The Respondent further claimed that the Applicant had not filed a Reference which was obviously erroneous. That it had also not indicated its unwillingness to comply with the notice to increase rent dated 14.6.2023 and which was to take effect on the 1.9.2023.
6. Both parties filed their respective submissions with those of the Tenant dated 12.4.2024 and those of the landlord are dated 25.3.2024.
7. Having perused all the pleadings on record and further having taken regard of the parties respective submissions, it is our view that the only issue for determination is whether the Applicant's Application has merit.
8. On filing the Reference dated 22.8.2023, the Applicant slept on his laurels and never took any action towards prosecution of the same. He actually never filed any evidence to support the Reference. In our view, he also did not serve the Respondent with the Reference and probably their claim that no Reference was filed in both its Replying affidavit and submissions thereof.
9. The Reference came up for hearing on the 21.09.2023, 16.10.2023, 14.11.2023, 15.12.2023 and eventually on the 19.2.2024 when the same was dismissed. No reasons were given by the Tenant for absenting itself from this court's proceedings on the 4 previous occasions.
10. We are also not convinced with the reasons given by the Tenant on its non-attendance to court. It knew well in advance that the Reference was to be heard on the 29.2.2024 and should have ensured that it was in an area where it would easily access the court with facilitation of effective internet connectivity.
11. We also doubt that the Tenant was ready to proceed with the matter when it had not served the landlord with the Reference and had also not filed any supporting evidence for the Reference or also served the same on the Respondent.
12. The Reference was dismissed six (6) months after filing without the Tenant having taken any steps towards having the same heard. We opine that filing of the Reference did not have the honest objective of having effective, efficient and expeditious justice administered to the parties.
13. We have also observed that despite the Application having been filed on 20.2.2024 and interim orders having been obtained on the 21.2.2024, the Applicant only served the same on the Respondent on the 4.3.2024 just a day to the hearing of the same on the 5.3.2024.  
On the 5.4.2024 when the matter was next in court, the Applicant sought for more time to comply with the orders issued on the 5.3.2024 and also engage a Counsel to prosecute this matter. From the record, no Counsel was ever engaged by the Applicant.
14. It is our considered view from the foregoing that the Applicant is not deserving of the orders sought. We therefore proceed to dismiss the Application with costs to the Respondent.
15. In the final analysis, the orders that commend to us are the following;-
  - i. That the Application dated 20.2.2024 is dismissed.



- ii. That the Applicant shall pay the Landlord costs assessed at Kshs. 10,000/=.

Those are the orders of the court.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF MAY, 2024.

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI**

**MEMBER MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Mr. Clapton for the Respondent

The Applicant is absent though aware of the date

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