



**Nthama v Maundu & 2 others (Tribunal Case E027 & E019 of 2024
(Consolidated)) [2024] KEBPRT 803 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 803 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E027 & E019 OF 2024 (CONSOLIDATED)
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
MAY 8, 2024**

BETWEEN

MARTIN NDUTO NTHAMA TENANT

AND

EDWARD MBINDYO MAUNDU LANDLORD

AND

IAN NDIRANGU MUGURO 1ST RESPONDENT

AIM ELECTRONICS LIMITED 2ND RESPONDENT

RULING

1. By the Reference dated 8.01.2024, M/S Aim Electronics Limited in BPRT Case No. E019 commenced these proceedings said to be founded on Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 hereinafter “the Act.”

The grievance by the Applicant/Tenant was that;-

“the Landlord, Edward Mbindyo Maundu has on the 31.12.2023 illegally locked the Tenant’s business premises on L.R. No. 209/72/06 Kangari House located at the junction of Luthuli Avenue/River Road whereas there is no rent arrears with a malicious aim to illegally evict the Tenant without following the law which actions are illegal.”

2. The Applicant proceeded to seek for the following reliefs;-

“I pray that the aforesaid actions by the Landlord amount to harassment and intimidation and he bears the costs of this Complaint.”



3. The Reference was accompanied by the notice of motion Application dated the 8.1.2024. The same was founded on a certificate of urgency of even date. The Application sought for the following orders:-
 - a. Spent
 - b. That an order be issued restraining the landlord from evicting, attempting to evict, attaching, selling or interfering in any way with the Tenant's business located on ground floor of the premises known as L.R. No. 209/72/06 Kangari House located at the junction of Luthuli Avenue and River road pending the hearing of the Application and eventually the Complaint.
 - c. That an order directing the landlord Edward Mbindyo Maundu to immediately remove the landlord's padlocks on the premises failure to which the Tenant through the assistance of the OCS Kamukunji police station shall proceed to execute and break the padlocks using all reasonable means at the cost of the landlord.
 - d. That the landlord do bear the costs of this Application and the Complaint.
4. Subsequent to the above, Martin Nduto Nthama the Applicant in BPRT Case No. E027 of 2024 filed the Reference dated 10.1.2024. It is not clear whether he was aware of the existence of BPRT Case No. E019 of 2024 herein. In his Reference, he complained that;

“The Landlord through his agents have unlawfully closed my business on the 9.01.2024 with all my goods of trade inside with sole intentions to evict me contrary to the provisions of Cap 301 Laws of Kenya. I pray this court to intervene and I be given the necessary orders.”
5. In his suit, Martin Nduto Nthama (hereinafter “Martin”) sued Edward Mbindyo Maundu as the landlord and Ian Ndirangu Muguru (hereinafter “Ian”) and Aim Electronics Limited (hereinafter “AIM”) as his agents. His Reference was accompanied by a notice of motion of even date also founded on a certificate of urgency. In the motion, Martin prayed for the following orders:-
 - i. Spent
 - ii. That the Respondent/landlord and his agent be and are hereby ordered to open and allow the Tenant free access to the business premises immediately to continue with his business and failure to open, the Tenant to break and gain access with the assistance of the OCS Kamukunji police station.
 - iii. That the landlord and/or their agents and/or employees, be prohibited forthwith by this court from unlawfully intercepting/harassing, intimidating and/or evicting, closing or threatening/ interfering/tampering, demolishing, disconnecting electricity power, water, disposing by and/ or in any manner whatsoever and/or howsoever with the Applicant's quiet occupation and lawful enjoyment of the suit premises at L.R. No. 209/5487 Kangari House along Luthuli Avenue pending hearing of this case.
 - iv. That the costs of the Application be provided for.
6. Mr. Edward Mbindyo Maundu, the 1st Respondent in both Complaints filed two Replying affidavits, the initial one which is undated and the 2nd one which is sworn on the 24.01.2024. The two are on casual perusal in support of the case for Martin.
7. The 2nd and 3rd Respondents namely Ian and Aim filed the affidavit sworn on the 30.01.2024 and also 30.01.2024 sworn by Alvin Muguru a director of the 3rd Respondent respectively.



8. By directions given on the 25.01.2024, both BPRT Case No. E019 of 2024 and E027 of 2024 were consolidated with the later suit being the lead file. The parties also consented to having both the Applications dated the 8.01.2024 and 10.01.2024 canvassed by way of written submissions.
9. The 1st Respondent namely Martin filed the submissions dated 16.03.2024, the 2nd and 3rd Respondents namely IAN and AIM filed the submissions dated the 30.01.2024. At the time of writing this Ruling, we did not have the benefit of the submissions for Martin as the same were neither in the court file nor in the portal.
10. We would wish to summarize the case for the parties herein as follows:-
 - a. Case for Martin
 - i. He was a lawful tenant of the 1st Respondent who had in conjunction with Ian and Aim locked him out of the demised premises.
 - ii. The Respondents were threatening to evict him from the demised premises for no good cause nor justification.
 - b. The Case for the 1st Respondent – Edward Mbindyo Maundu
 - i. Martin was his tenant since 8.01.2024 and had paid him one months rent at Kshs. 450,000/= and two months security deposit of Kshs. 900,000/=.
 - ii. He had entered into a lease agreement dated 8.01.2024 with Martin and the later had complied with all the terms of the lease.
 - iii. Ian was his previous tenant who had left voluntarily after accumulating rent in arrears for six (6) months.
 - iv. That when Ian left on 31.12.2024, he carted away most of his merchandise and surrendered all keys to the doors to the demised premises.
 - v. Ian only left a few items that could not fit in his motor vehicle and which he kept under safe custody under the supervision of the chief Starehe location and which goods were ready for the Tenant's collection on payment of the rent in arrears at Kshs. 2,580,000/=.
 - vi. Aim has never been his Tenants and his tenancy with Ian terminated on 31.12.2023 and therefore this court had no jurisdiction to adjudicate over this matter.
 - vii. He was a head tenant of the premises and had rental obligations which had to be met – Annexure “EMM3”.
 - viii. The rent deposit made by Ian on 02.03.2020 at Kshs. 1,290,000/= had long been exhausted by accruing rent arrears.
 - ix. Had instructed an auctioneer to levy distress on the property of Ian and which was effected on the 4.12.2023 by the issuance of a proclamation notice. The 2nd Respondent was served with a notification of sale on the 21.12.2023.
 - c. The Case for the 2nd and 3rd Respondents
 - i. It was a Tenant on LR No. 209/72/06 Kangari House located at the junction of Luthuli Avenue and River road at a monthly rent of Kshs. 430,000/=.



- ii. Had paid the Landlord an amount equivalent to three (3) months rent as security amounting to Kshs. 1,290,000/=.
 - iii. On the 31.12.2023, the 1st Respondent locked up the demised premises without notice and without following the due process of the law.
 - iv. Their goods and merchandise are still at the demised premises.
 - v. They did not have any rent in arrears as at 31.12.2023.
 - vi. It was illegal for the chief Starehe location to oversee their purported eviction from the demised premises.
 - vii. No levy of distress had ever been effected against them.
 - viii. They had no relationship with Martin and the 1st Respondent was using unorthodox means to evict them.
11. Having perused all the materials placed before us, we are of the view that the issues for determination in this matter are the following:-
- A: Whether the suit by M/S Aim Electronics Limited is competent.
 - B: Whether the Application by the Applicant in BPRT E027 of 2024 is merited.
 - C: Who should bear the costs of this suit.

Issue No. A: Whether the suit by M/S AIM Electronics Ltd. is competent

12. The mandate of this Tribunal is to determine disputes or issues relating to controlled tenancies. The same are defined under Section 2(1) of the Act as:-
- “Controlled tenancy means a tenancy of a shop, hotel or catering establishment-
- a. Which has not been reduced into writing; or
 - b. Which has been reduced into writing and which-
 - i. Is for a period not exceeding five years; or
 - ii. Contains provision for termination, otherwise than for breach of covenant within five years from the commencement thereof;
13. The same Section 2(1) of the Act further defines a landlord as:-
- “In relation to a tenancy, means the person for the time being entitled, as between himself and the tenant, to the rents and profits of the premises payable under the terms of the tenancy.”
14. Pursuant to the Act, a Tenant is defined as:-
- “In relations to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding and includes a sub-tenant.”
15. From the materials placed before us by both parties, we doubt that there has ever existed a Landlord and Tenant relationship. All the evidence on rent payment by the 2nd and 3rd Respondents showing rent payment, show that the person paying rent as Ian Ndirangu Muguro (annexure “AM1”).



16. Also, the three (3) months' rent deposit for security was made by Ian Ndirangu Muguro – annexure “EM1” by the 1st Respondent. It is plain that M/S AIM Electronics Ltd and Edward Mbindyo Maundu have never had a Landlord/Tenant relationship as envisaged by Section 2(1) of the Act.
17. In the case of; *Pritam vs Ratilal* [1972] EA the court on the issue held that;-

“Therefore, the existence of the relationship of Landlord and Tenant is a pre-requisite to the Application of the provisions to the Act. Where such a relationship does not exist or it has come to or been brought to an end, the provisions of the Act will not apply. The Applicability of the Act is a condition precedent to the exercise of jurisdiction by the Tribunal, otherwise the Tribunal will have no jurisdiction. There must be a controlled tenancy as defined in Section 2 of which the provisions of the Act can be made to apply. Outside it, the Tribunal has no jurisdiction.”
16. Further, Justice Anyara Emukule in *Kingfisher Properties Ltd vs Business Premises Rent Tribunal & 3 Others* [2015] eKLR held that;-

“It is important to add that if only for purposes of emphasis, that the jurisdiction of the Respondent Tribunal is solely premised on the existence of a Landlord-Tenant Relationship.”
18. From the foregoing, we determine that it was not in any way whatsoever demonstrated that there has ever existed a landlord/Tenant relationship between AIM Electronics Ltd and Edward Mbindyo Maundu as envisaged by Section 2 of the Act. The Reference and notice of motion Application both dated 8.01.2024 are therefore declared incompetent and a nullity in law and we would struck out the same.

Issue No. B: Whether the Applicant's Application in BPRT E027 of 2024 dated 10.01.2024 is merited

19. Though the Applicant sued the said Edward Mbindyo Maundu as the 1st Respondent, the later was his greatest defender. We strongly suspect that the suit by the Applicant against the 1st Respondent was conceived out of connivance by both parties.
20. It is illogical that the 1st Respondent would have received Kshs. 1,350,000/= on the 8.01.2024 and that he was on the 10.01.2024 barely after two (2) days of receiving the money and entering into the lease agreement with the Applicant he was locking up the demised premises, interfering and interrupting the Applicant's quiet possession thereof.
21. We also highly doubt that the 2nd and 3rd Respondents had voluntarily left the demised premises on the 31.12.2023 and that barely a week thereafter they are re-asserting their rights over the demised premises.

In our view, the 2nd and 3rd Respondents were irregularly and unlawfully ejected from the demised premises and a stamp of legitimacy though erroneous was sought from the chief of Starehe location who purportedly supervised smooth transfer of occupation.
22. Needless to say that we did not believe that a proclamation notice was issued on the 4.12.2023 and that a notice of sale was issued on the 21.12.2023. These were documents in our view that were made with this case in mind. The question that begs answer is why the 1st Respondent would purportedly allow the 1st and 2nd Respondents to cart away most of their merchandise which had already been proclaimed and/or attached and further preserve such attached merchandise for them in his safe custody. It is unconscionable and cannot be true.



23. We therefore decline the invitation of issuing orders in vain and will respectively not issue orders against the 1st Respondent as sought by the Applicant which are not expected to have any effect by the parties concerned. The Objective is merely to manipulate and defeat the cause of justice.
24. On the case of the Applicant as against the 2nd and 3rd Respondents, I retaliate our earlier finding as we endeavored to interpret Section 2(1) of the Act and declare that there is no evidence that there has ever existed a Landlord/Tenant relationship between the parties nor that the 2nd and 3rd Respondents were agents of the 1st Respondent.
25. We would therefore dismiss the case of the Applicant as against the 2nd and the 3rd Respondents for want of jurisdiction by this court to adjudicate over any issue between the parties in view of the provisions to Section 2(1) of the Act.
26. For reasons only of emphasis, we would have without difficulty awarded damages for loss of tenancy to the 2nd Respondent if he had competently originated BPRT Case No. E019 of 2024. Section 2(1) defines a Tenant as;-

“in relation to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding, and includes a sub-tenant.”
27. In that, we would have found reliance in the case of Lena Serange vs Robert Oyieko Angoi [2020] eKLR where the court in similar circumstances as the present ones held that;-

“Having said that, it would not be practical to set aside the order issued on the 12.04.2019 and reinstate the Appellant in the premises as the owners of the premises have already leased the premises to the Respondent. The Appellant’s only recourse is in damages for loss of tenancy. The Appellant is also at liberty to sue the owners of the demised premises for a refund of the unutilized rent and general damages for breach of the lease agreement. In view of the foregoing, I find merit in the Appeal and I allow it. The matter is referred back to the Tribunal for assessment of the Appellant’s damages for loss of tenancy. The Respondent shall bear the costs of this Appeal.”
28. As we have said earlier, the 2nd and 3rd Respondents and more so the former, cannot enjoy these reliefs for having incompetently originated its suit. All is however not lost as the Civil courts could embrace and address such grievances as he had raised in this matter.

Issue No. C: Who should bear the costs of the matters herein

29. Though we have struck out suit No. E019 of 2023 and allowed the Applicant quiet enjoyment of the demised premises in E027 of 2024, we would in view of our analysis hereinabove award the costs of the matters herein and in particular in suit No. E027 of 2024 to the 2nd and 3rd Respondents as against the Applicant.
30. From the analysis of the evidence hereinbefore, there is nothing that will be left of the Reference dated 10.01.2024 and the same will be allowed in the same terms as the Application thereof.
31. The 1st Respondent will also release to the 2nd and 3rd Respondents all the goods and merchandise removed from the demised premises within fourteen (14) days of the date hereof without fail.
32. In the final analysis, the orders that commend to us are the following;-



- a. That the Application and Reference both dated 8.01.2024 in BPRT Case No. E019 of 2024 are struck out with no orders as to costs.
- b. That the Applicant in E027 of 2024 shall be allowed quiet enjoyment of the demised premises in settlement of the Application and Reference both dated 10.01.2024 in BPRT Case No. E027 of 2024.
- c. That the Applicant shall pay costs in BPRT Case No. E027 of 2024 to the 2nd and 3rd Respondents assessed at Kshs. 30,000/=.

Those are the orders of the court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF MAY, 2024.

HON. NDEGWA WAHOME, MBS - PANEL CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

AND

HON. JOYCE MURIGI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

