



**Amutalah t/a Victoria Junior Center v Kirui (Tribunal Case E141 of 2023)  
[2023] KEBPRT 1119 (KLR) (Civ) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1119 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E141 OF 2023  
CN MUGAMBI, CHAIR  
NOVEMBER 30, 2023**

**BETWEEN**

**EMMANUEL AMUTALAH T/A VICTORIA JUNIOR CENTER ..... APPLICANT**

**AND**

**JOHN MUTHIORA KIRUI ..... RESPONDENT**

**RULING**

1. The tenant's application dated 22.8.2023 seeks in the main an order that this Tribunal be pleased to review, vary or set aside and/or rescind the ruling issued on 26.5.2023 and all consequential orders and directions.

The Applicant/Tenant has also sought for police assistance and the costs of the application.

**The Tenant's depositions**

2. The tenant's affidavit in support of his application may be summarized as follows:-
  - a. That the tenant operates a school known as Victoria Junior School which concerns the Welfare of the community and the tenant requires extension of time for relocation.
  - b. That there are grade 4, 5 and 6 pupils registered and preparing for their National examinations at the suit premises which is a KNEC Center.
  - c. That the children deserve a conducive environment to prepare for the KNEC based examinations.
  - d. That the landlord shall suffer no prejudice if the application is allowed.



### **The Landlord's depositions**

3. The landlord's affidavit sworn on 10.11.2023 may be summarized as follows:-
  - a. That the landlord intends to repair and renovate the suit property.
  - b. That the tenant has been given more than ample time to vacate the premises, the notice to vacate dated 1.12.2022 was issued five months prior to the landlord seeking orders for the tenant to vacate the premises.
  - c. That the landlord had even offered to forfeit the arrears of rent.
  - d. That the tenant has sublet a portion of the suit premises and is even collecting rent therefrom.
  - e. That the tenant is in rent arrears amounting to Kshs. 1,147,000/=.
  - f. That in the event that the tenant is allowed to stay in the premises, then he ought to be ordered to leave immediately after the examinations.

### **Analysis and determination**

4. The only issue that arises for determination is whether the tenant's application ought to be allowed, that is, whether the tenant is entitled to the orders sought in his application.
5. The orders emanating from the ruling of the Tribunal dated 26.5.2023 were issued on the grounds that the tenant had not filed a reference in objection to the notice to terminate his tenancy and neither had he responded to the landlord's application. On the basis of the foregoing, the Tribunal terminated the tenancy between the parties and ordered the tenant to vacate the suit premises within a period of sixty (60) days to enable the tenant to relocate his business.
6. I have noted that although the tenant seeks that the orders/ruling of 26.5.2023 be set aside, he does not offer any explanation as to why he did not file his reference or respond to the landlord's application dated 17.1.2023. The tenant does not even venture to propose what it is that he intends to do with these proceedings in the event that the proceedings and ruling of 26.5.2023 are set aside.
7. On 14.11.2023, when this matter came up for hearing, the Applicant informed the Tribunal that he would be willing to vacate the premises after the assessors had finished with the students' projects. The tenant did not elaborate what he meant by "projects." The tenant further confirmed that he had not paid rent and further that he had informed the landlord about his predicament.
8. In response, Counsel for the tenant informed the court that the tenant had by a letter dated 22.8.2023 requested
9. to be allowed to vacate the premises by 4.11.2023. The tenant claimed that he had written the said letter under duress and in an attempt to save the children.
10. The National Examinations are held once and although the tenant insists that he would like to have the students finish their assessment projects, no evidence of such projects has been brought to the attention of the Tribunal.
11. The tenant has further admitted that he is in rent arrears which the landlord states to be Kshs. 1,100,000/=. This is no mean figure and the tenant is not even offering to pay the same.
12. In these circumstances, I do not find any merit in the tenant's application dated 22.8.2023 and the same is hereby dismissed with costs to the landlord.



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF NOVEMBER 2023.**

**HON. CYPRIAN MUGAMBI - CHAIRPERSON**

In the presence of;

Mr. Omondi holding brief for Ms. Kahindi for the landlord

Mr. Amutallah tenant in person

