



Mwangi v Mutugi & another; Ngugi (Interested Party) (Tribunal Case E823 of 2024) [2024] KEBPRT 1514 (KLR) (18 October 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1514 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E823 OF 2024
P MAY, MEMBER
OCTOBER 18, 2024**

BETWEEN

ALICE NJERI MWANGI TENANT

AND

MARY WANJIKU MUTUGI 1ST RESPONDENT

JANET KIMEU 2ND RESPONDENT

AND

ELIZABETH WAIRIMU NGUGI INTERESTED PARTY

RULING

1. The application before me is the tenant's notice of motion dated 26th July, 2024 which the tenant principally sought to be granted unlimited access to the demised premises and that the landlord be restrained from letting out the premises pending the determination of the reference. The application was premised on the grounds set out in the application and the further grounds stated in the supporting affidavit sworn by the tenant. The application was placed before the Tribunal on 1st August, 2024 whereby interim orders were made in favour of the tenant pending the inter-partes hearing.
2. The landlord upon being served with the application, filed a separate application by way of certificate seeking to have the orders set aside stating that the same were acquired through misrepresentation. The landlord stated that the tenant had obtained the orders in question while knowing that they had illegally sub-let the premises to the interested party. She therefore stated that the orders were irregular and that the Tribunal should have them set aside. The landlord also filed a response to the tenant's application through a replying affidavit.



3. The Tribunal undertook an inspection to ascertain who was the true tenant and the inspector made a finding that the premises were open and operational and the merchandise were owned by one Alice Njeri Mwangi.
4. The parties elected to canvass the application by way of written submissions. I have considered the applications filed, the responses thereto and the submissions and would proceed as follows:

Tenant's case

5. The tenant's case is fairly simple. She stated that she has been in occupation of the demised premises paying a monthly rent of Kshs. 17,000. She stated that she took over the premises having purchased the same from one Margaret Kabati. She has annexed an agreement for sale dated 12/7/2022. Curiously the said Kabati is not a party to the present proceedings even though the agreement meets all the elements of a contract.
6. The tenant stated that she has always met her contractual obligation and has always paid rent as when it fell due. She has annexed some of the deposit slips to support this position. She was therefore surprised when the landlord issued her with a verbal notice to vacate the premises hence the reason she approached the Tribunal.

Landlord's case

7. The landlord stated that the tenant was a stranger to them and that she had been receiving rent from the interested party under the pretext that they owned the premises. She maintained that the tenant had never occupied the premises thus had misled the Tribunal in granting the interim orders.

Interested party's case

8. She stated that she had been in occupation of the demised premises since March, 2024 and had been paying rent to the tenant. She had been made to believe that the premises were owned by the tenant until recently when she met with the landlord. She states that it was at this point that she discovered the real owner of the premises.
9. She stated that the issue was escalated to the area chief whereby the tenant reacted by locking her out of the premises. She stated that she had regularized her occupation by entering into a lease with the landlord.

Analysis

10. Flowing from the above set of facts, it is clear that the Tribunal has to consider the merits of the prayer for temporary injunction sought by the tenant.
11. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of *Giella Versus Cassman Brown* (1973) EA 358. The conditions for the grant of an interlocutory are now, I think well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury in which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of probability.



12. This position has been reiterated in numerous decisions from Kenyan courts and more particularly 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; establishes his case only at a prima facie level; demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favor.”

13. In the present dispute, the tenant has stated that they have been in occupation of the demised premises. She also maintained that she has been paying rent as when it fell due and annexed evidence of the same. The inspection carried also confirmed as search. On this premise they have established a prima facie case. The question on who is the real tenant in this dispute cannot be addressed conclusively at this stage as the same would require calling for additional evidence during the hearing of reference. This will also have a bearing on the allegations that the interim orders were obtained irregularly.
14. In the end, the following orders commend itself:
- The tenant’s notice of motion application dated 26/7/2024 is allowed in terms of prayer (4).
 - The parties to file and exchange paginated bundle of statements and documents including comprehensive proof of payment of rent that they shall seek to rely on during hearing within 7 days from the date hereof.
 - Parties to fix a hearing date on priority basis.
 - The tenant to pay rent as when it falls due during the pendency of the proceedings.
 - Each party shall bear their own costs.

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

HON. PATRICIA MAY - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Kiama for the landlord and in the absence of the Tenant

