



**Jacob v Kobia (Tribunal Case E017 of 2022)  
[2023] KEBPRT 6 (KLR) (Civ) (12 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 6 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E017 OF 2022  
GAKUHI CHEGE, VICE CHAIR  
JANUARY 12, 2023**

**BETWEEN**

**ABRAHAM MICHUBU JACOB ..... APPLICANT**

**AND**

**PETER THUANE KOBIA ..... RESPONDENT**

**RULING**

1. The tenant moved this Tribunal through a complaint dated May 13, 2022 under section 12(4) of [Cap. 301](#), Laws of Kenya to the effect that the Landlord had closed his business premises in recovery of purported rent arrears while no rent arrears were owing. The tenant further complained that the landlord had illegally evicted him from the premises.
2. The complaint was accompanied by a motion of even date seeking stay of attachment of the tenant's property together with an order of injunction to restrain the landlord from levying distress against the business premises standing on plot number Meru/Akaiga/5627 pending determination of the case.
3. According to the supporting affidavit of the tenant sworn on March 4, 2022, the business premises was closed without notice and he only learnt about the closure on December 16, 2020. Even after closure, the tenant deposes that he paid all the rent arrears as per annexure 'AMJ1'.
4. The matter came before Hon. Cyprian Mugambi (Chairman) on May 16, 2022 who directed service thereof for hearing on May 25, 2022.
5. On May 25, 2022, the matter came up before me in the presence of counsel for the landlord and in absence of the tenant and the same was adjourned to June 20, 2022. On June 20, 2022, both parties appeared and the Respondent having failed to file a response, the application was allowed in terms of prayers 2, 3, 4 and 5 thereof.



6. On June 23, 2022, the landlord filed a motion of even date seeking for setting aside of the orders of June 20, 2022 on the grounds that his advocates experienced technical problems and was unable to file a replying affidavit in time or join the virtual court session on June 20, 2022.
7. The landlord however, joined the virtual court session but was unable to properly explain to the court the problem his advocate was experiencing. He requested for 14 days for filing the response which was declined.
8. The applicant attached copies of email correspondence on his advocates attempt to file a replying affidavit which are marked as annexure 'BPRT 1'.
9. According to the landlord, it is the tenant who closed the suit premises on his own volition and took the keys to the chief's office. The issue was resolved by the chief and the tenant paid outstanding rent arrears but he closed the business premises without reason.
10. It is on that basis that the landlord seeks for orders to set aside the Tribunal orders of June 20, 2022 so that the application dated May 13, 2022 can be heard on merit.
11. The application was directed to be served for hearing inter-partes on August 2, 2022. However, on July 7, 2022, the tenant moved this Tribunal by a motion of even date seeking for orders to break into the suit premises to be executed by the area OCS.
12. The matter came up on July 21, 2022 for hearing of the application dated 23/6/2022 and as it had not been served, counsel for the landlord sought for another date which was granted. The matter was thus fixed for hearing on August 17, 2022.
13. On August 17, 2022, there was no affidavit of service in respect of the application dated 23/6/2022 and the matter was adjourned to September 28, 2022.
14. On September 28, 2022, the matter came up in the presence of both parties who were directed to comply with previous directions to file responses and exchange their respective applications. The tenant was also directed to pay rent arrears before the next mention date failing which the interim orders earlier given would stand automatically vacated with the landlord being at liberty to distress for rent. The matter was set for mention on October 24, 2022.
15. On October 24, 2022, only the landlord's counsel appeared and submitted that the application dated July 7, 2022 was never served upon the Respondent. This Tribunal directed that the same be served by close of business on October 28, 2022 failing which the same would stand dismissed. The matter was set for mention on November 9, 2022.
16. On November 9, 2022, the landlord's counsel appeared and indicated that she had not served the tenant and prayed for another date to confirm submissions and service. The matter was therefore listed on 6/12/2022.
17. On December 6, 2022, only the landlord's counsel and her client appeared. She indicated that she had filed her submissions via email. The matter was therefore fixed for ruling on 12/1/2023.
18. By the time of writing this ruling, only the tenant's submissions were on record.
19. The following issues arise for determination in this case:-
  - a. Whether the landlord is entitled to the reliefs sought in the application dated June 23, 2022.
  - b. Whether the tenant is entitled to the reliefs sought in the application dated July 7, 2022.



- c. Who is liable to pay costs?
20. I note that the tenant did not file any replying affidavit to the landlord's application dated 23/6/2022. Although I have not seen any affidavit of service in respect of the said application evidencing when the same was served upon the tenant, I have noted that the latter refers to the application at paragraph 5 of his written submissions leaving no doubt about the issue of service.
21. In absence of any replying affidavit to controvert the reasons given by the landlord for his advocate's failure to attend court on June 23, 2022, I have no reason to doubt him. In any event, the explanation of failure of technology is reasonable as even the most sophisticated technology has been known to fail at the most critical time when needed. The explanation given for failure to file a replying affidavit on the CTS Portal is backed by emails exchanged between the landlord's counsel and this Tribunal's staff members/Registry.
22. In regard to the tenant's application dated July 7, 2022, I note that it is predicated upon the orders of June 20, 2022 which were on September 28, 2022 expressed to automatically lapse if the tenant did not pay all the rent in arrears before the next mention date of October 24, 2022. I have not seen any evidence of such payment on record. In any event, the application dated June 23, 2022 having been found meritorious renders the tenant's application dated July 7, 2022 otiose.
23. I note that the main issue in this matter is payment of rent and continued use of the suit premises by the tenant. It is thus imperative that the landlord and the tenant file and exchange rent account statements from January 1, 2020 to date and the Tribunal's rent inspector to visit the suit premises and establish whether the same is locked and/or if the tenant's properties are still held therein.
24. Costs of the two (2) applications shall abide the findings on the foregoing two issues which shall also determine the outcome of the complaint.
25. Consequently, the following orders commend to me in this matter:-
- a. The landlord's application dated 23/6/2022 is hereby allowed and the orders of June 20, 2022 are hereby set aside.
  - b. The tenant's application dated July 7, 2022 is hereby dismissed.
  - c. The landlord and tenant shall simultaneously file and exchange statements of rent account for the period starting from January 1, 2020 up to and including the date of filing thereof within the next Thirty (30) days hereof.
  - d. The Tribunal's Rent Inspector shall visit the suit premises for purposes of establishing whether the same is locked and/or if the tenant's properties are still held therein before any further orders in this matter.
  - e. Costs of the two applications shall abide the Tribunal's findings on the foregoing twin issues.
- It is so ordered.

**RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 12<sup>TH</sup> DAY OF JANUARY 2023.**

**HON. GAKUHI CHEGE**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

**Ruling delivered in the presence of:**



Landlord present in person

No appearance for the Tenant

**Further orders**

Mention to confirm compliance on February 16, 2023.

Mention notice to issue upon the Tenant

