



**Kiruki v Makena (Tribunal Case E205 of 2024)
[2024] KEBPRT 1638 (KLR) (25 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1638 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E205 OF 2024
A MUMA, MEMBER
NOVEMBER 25, 2024**

BETWEEN

HUMPREY KIRUKI LANDLORD

AND

JOSEPHINE MAKENA TENANT

RULING

A. Parties And Representatives

1. The Applicant, is the owner of the business premises located in Bamburi within Mombasa County the suit property (hence the landlord).
2. The Landlord is acting in person.
3. The Respondent is the occupant of the suit premises located in Bamburi within Mombasa County (hence the Tenant).
4. The Tenant is acting in person.

B. Background Of The Dispute

5. The Landlord moved this tribunal vide a Reference, Notice of Motion Application and Complaint dated 26th August 2024 seeking for; an order compelling the Tenant/Respondent to pay with immediate effect all of the outstanding unpaid electricity bill, an order restraining the tenant from illegal connection of electricity power failure to which the tenancy stand terminated, the Respondent/Tenant to pay outstanding rent arrears of Kshs.10,000, Kshs.20,000 being mesne profit of the space the Tenant unlawfully occupied without the landlords consent for a period of Two months, an order directing the Respondent/Tenant to pay rent on or before every 5th day of the month without fail.



6. The Tribunal issued orders dated 13th September 2024 that the application be placed for hearing on 9th October 2024 and for the applicant to serve the application upon the Respondent and file and serve an affidavit of service as proof of service.
7. On 9th October 2024, the matter proceeded ex-parte and the Tribunal issued orders that the Tenant to pay rent Kshs.100,000 by the next hearing date and pay power bill of Kshs.40,000, the matter to be heard on 4th November 2024, hearing notice to issue and an affidavit of service to be filed.
8. The Tenant filed a reference and Notice of Motion Application dated 28th October 2024 seeking for the application to be certified urgent, the orders issued by the tribunal on 9th October 2024 to be set aside, an order directing the Landlord to restore supply of electricity power to the demised premises and in default the Tenant be granted leave to do so as at the Landlords costs and the exercise be supervised by a KPLC official, that the Tenant be exempted from paying rent for the period there was no electricity, an order compelling the Landlord to compensate the Tenant for loss of business and spoiled perishable goods, the OCS Kadzadani Mwatamba to enforce compliance of the orders and the costs of the application to be provided for.

C. The Landlord's Claim

9. The Landlord avers that the Tenant is in arrears of Kshs.100,000 being rent that has accumulated for a period of 5 months.
10. The Landlord further avers that the Tenant has been making illegal power connections when Kenya Power disconnects power for lack of payment.

D. The Tenant's Claim

11. The tenant claims that the Landlord disconnected supply of electricity and removed the meter box without any legal justification or reason whatsoever.
12. It is therefore the Tenant's case that the Landlord should compensate her for loss of business and damages for the property when the electricity was connected and that the tribunal should exempt her from paying rent for the period electricity was disconnected.

E. List Of Issues For Determination

13. I have carefully perused the material placed before this court by the parties and it is my considered opinion that the following issues fall for determination:
 - a. Whether the Tenant should be compensated for the damages incurred
 - b. Whether the Tenant is in arrears

F. Analysis & Determination

a. Whether the Tenant should be compensated for the damages incurred

14. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (hereinafter 'the Act') Chapter 301 Laws of Kenya Act at section 12(4) provides that:

In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit.



15. In this case the Landlords avers that the Tenant had occupied the space neighboring the rented shop without his consent and which has caused him a loss of Kshs.20,000.
16. He further avers that she has not paid rent since August 2024 to date at a rate of Kshs.10,000 per month which totals to Kshs.40,000 as well as making illegal electricity connections after power was disconnected for non-payment of the bill.
17. The Tenant avers that the Landlord disconnected the electricity on 20th June 2024 causing her damage to her property amounting to Kshs.45,5450.
18. The tribunal notes that the Tenant has not provided any evidence to support the claim for damages incurred when the power was disconnected for which she claims compensation of Kshs.45,450.
19. My hands are therefore tied in determining the issue on compensation for damages since no evidence has not been proved.

b. Whether the Tenant should pay the electricity bill

20. The Tenant avers that when she moved into the suit premises, there was a pending electricity bill of Kshs.54,000. She further states that she paid Kshs.43,000 in respect to the electricity bill arrears.
21. The same is not disputed by the Landlord.

G. Orders

22. The upshot is that the Landlord's Reference and Application dated 26th August 2024 are partially upheld in the following terms:
 - a. The stock is not proved by receipts therefore the Kshs.45,450 claimed by the Tenant fails.
 - b. There seems to be a back and forth on electricity. The Landlord does not oppose the same. Tenant seems to have inherited an old bill; Tenant to utilize 4 months rent to offset any electricity bill pending in particular the Kshs.11,000 balance plus damages caused due to lack of electricity/intermittent disconnections;
 - c. Tenant to commence to pay December rent at Kshs.10,000 without any deductions on or by the 5th of December 2024 and resume business;
 - d. Landlord to receive the same and stop harassing the tenant in any way whatsoever;
 - e. Any failure in payment of rent by the 15th, the Landlord will be at liberty to take back vacant possession;
 - f. Emily's Shop 2 should be handed back immediately and should be as it was before; and
 - g. Arrears and repairs to be catered for by Emily (the previous Tenant) failure to which distress to issue.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 25TH DAY OF NOVEMBER 2024



in the presence of Humprey Kiruki the Landlord in person and Josephine Makena, the Tenant in person.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

