



**Baariu v Mwambi & another (Tribunal Case E485 of 2024)
[2024] KEBPRT 1290 (KLR) (Civ) (6 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1290 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E485 OF 2024
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
SEPTEMBER 6, 2024**

BETWEEN

JADSON BAARIU APPLICANT

AND

MARGARET MWAMBI 1ST RESPONDENT

NABUI HOUSE 2ND RESPONDENT

RULING

A. Dispute Background

1. The tenant/applicant herein moved this Tribunal vide a Reference dated 24th April 2024 under Section 12(4) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Cap 301, Laws of Kenya with a complaint that the landlord was interfering with the suit premises.
2. The tenant/applicant simultaneously filed a notice of motion under certificate of urgency dated 24th April 2024 in which he sought for orders against the Respondents to reconnect electricity supply to the suit premises forthwith. He also sought for restraining orders against them from interfering with his tenancy pending hearing inter-partes and that the OCS, Parklands Police Station ensures compliance. Finally, he sought for costs of the application.
3. The application is predicated upon the grounds set out on the face thereof and the tenant's affidavit sworn on 24th April 2024 wherein he deposes that he has been in occupation of the suit premises for over 1 year 4 months paying a monthly rent of Kshs 180,000/=.
4. The landlord is accused of disconnecting electricity supply to the suit premises without proper notice or a lawful order from this Tribunal. The tenant deposes that she has invested heavily in his business and unless the orders sought are granted, he stands to suffer irreparable loss and damage.



5. Interim orders were issued ex-parte on 26th April 2024 pending hearing inter-partes on 22nd May 2024.
6. Through a second application dated 16th May 2024, the tenant sought that he and one Lilian Nyambura Munanu be allowed to sue in the name of MEDPRIME TRAINING INSTITUTE. They also sought to amend the reference to include threats of illegal notice to terminate tenancy, forceful demand by the landlord aimed at compelling them to sign a tenancy agreement without consensus ad idem and denial of relevant documents to apply for own electricity meter from the relevant government body.
7. The second application was allowed on 22nd May 2024 since the Respondents were not opposed to the amendment of the pleadings. The tenant was therefore allowed 3 days to amend the reference and application. The Respondents were granted 10 days to respond to the amended application. The matter was fixed for mention on 7th June 2024 for purposes of taking directions on the hearing.
8. The tenant amended his reference by including the allegations set out in his application dated 22nd May 2024.
9. The 1st Respondent filed a replying affidavit sworn on 16th May 2024 in opposition to the tenant's application dated 24th April 2024 in which she deposes in material part that she is the appointed agent in respect of Nabui House situate on L.R No. 1870/IX/173, Westlands, Nairobi City.
10. There is only one electricity meter for the whole house comprising of 5 Floors with numerous offices. There is a special electricity meter connected to all the rooms in the building which is used to measure the units consumed in each room.
11. It is the 1st Respondent's contention that the Landlord had prepaid a sum of Kshs 100,000/= to avoid loss of electricity for the entire building on the understanding that the tenants would pay back their individual consumption to enable the landlord recoup the prepayment.
12. In August 2023, the 1st Respondent noted that there was a problem with the meter for the rooms on 4th Floor which prevented accurate communication of electricity bills to the tenant. The same was fixed by an electrician who recorded the units consumed on the said floor by the tenant. The electricity bill was pro-rated by assigning a concessionary cost of Kshs 27/= per unit which was lower than the unit price of Kshs 30/= obtaining then. The tenant was informed about his electricity bills breakdown from December 2023 as per the email trail marked MM2 and excel sheet marked MM3.
13. By April 2024, the tenant owed Kshs 39,024.00 which was communicated to him via email. The said bills are met by the landlord whenever the tenant fails to settle to avoid electricity disconnection for the whole building.
14. The tenant is accused of making unauthorized alterations to the building's structure in January 2024 through demolition of a wall on the premises and replacing a window with a door as shown on the photograph marked MM4.
15. A guard who reported the matter to the 1st Respondent was finally arrested and charged on what is alleged to be trumped up charges instigated by the tenant. The landlord on the other hand wrote an email to the tenant to withdraw the charges, repair the wall and window, pay for electricity arrears and execute a tenancy agreement to formalize the relationship. The said email is marked as annexure MM5.
16. The tenant is accused of failing to settle the electricity bills and of dumping the refuse materials on the space belonging to neighboring institutions while repairing the illegal alterations done on the building. The refuse was removed at a cost of Kshs 11,500/= by the 1st Respondent.



17. The tenant is also accused of failing to pay full rent for April 2024 claiming that he was offsetting money paid by his students for parking on the premises. According to the 1st Respondent, the tenant was not entitled to do so since provision of parking is not a right granted to him. In any event, he did not personally incur the claimed amount.
18. The tenant is accused of writing letters to the 1st Respondent through an imposter advocate and also interfering with the electricity meter in the suit premises which was captured through CCTV cameras installed by the landlord. As a result of all the foregoing events, the landlord felt that her relationship with the tenant had irretrievably broken down.
19. In view of the foregoing, the tenant was served with a notice of termination of tenancy marked MM10 and a letter outlining the breaches of tenancy. The 1st Respondent denies interfering with the tenant's tenancy despite all the breaches aforesaid.
20. The 1st Respondent filed a further replying affidavit sworn on 6th June 2024 attaching screenshots of her conversation with the tenant and an email of 19th December 2023 together with an excel sheet capturing details of the proposed contractual terms including concessions that the landlord was willing to make to the tenant on rent payable for the many rooms occupied in the suit premises. However, no tenancy agreement was executed.
21. The 1st Respondent also filed a further affidavit sworn on 3rd July 2024 attaching emails written to various tenants explaining the water shortage in the building and the steps taken by the landlord to ameliorate the situation. The tenant is accused of taking advantage of the email to reduce the service charge payable by him to the landlord.
22. The tenant also filed a further affidavit sworn on 18th July 2024 stating that he proposed and paid a fair amount based on his calculations in respect of his electricity bills for January -August 2023 when the 4th Floor meter was inaccurate. He has attached as annexure JB-1 being evidence of the payment to the agent. He denies being in utility bills arrears. He however admits pressing charges against one of the landlord's security guards and offsetting rent against illegal parking fees collected by said guard.
23. According to the tenant, the electricity consumption bill proposed by the Respondent is too high as he only occupied one floor, had less staff and appliances during the period in dispute.
24. The tenant deposes that the alleged termination notice was not annexed and the letter of 24th April 2024 does not conform with Section 4 of Cap 301.
25. In regard to the lease agreement, the tenant deposes that he proposed amendments thereto as per annexure marked JB-4 but the Respondent was yet to present a revised version.
26. The matter was directed to be disposed of by way of written submissions and both parties complied. We have considered both parties' submissions in arriving at our decision.

B. Issues for determination

27. The following issues arise for determination;
 - a. Whether the Respondent served a valid notice to terminate the tenant's tenancy.
 - b. Whether the tenant is entitled to the orders sought in the application dated 24th April 2024 and the amended reference dated 22nd May 2024.
 - c. Whether the tenant has any outstanding electricity bills owing to the landlord and garbage collection charges.



d. Who shall bear the costs of the suit?

Issue (a) Whether the Respondent served a valid notice to terminate the tenant's tenancy;

28. Section 4(2) of Cap 301, Laws of Kenya provides as follows;

“(2) A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.”

29. In the case of Manaver N Alibhai t/a Diani Boutique – vs- South Coast Fitness & Sports Centre Limited Civil Appeal No. 203 of 1994 it was held as follows: -

“The Act lays down clearly in detail, the procedure for the termination of a controlled tenancy. Section 4(1) of the Act states in very clear language that a controlled tenancy shall not terminate or be terminated and no term or condition in or right or service enjoyed by the tenant of any such tenancy shall be altered otherwise than in accordance with specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the tenant. The notice must also specify the ground upon which termination is sought. The prescribed notice in form A also requires the landlord to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice.”

30. It is not in dispute that through an email dated 25th April 2024, the landlord's advocates M/S Nyauchi & Co. Advocates sent a notice of termination of tenancy to the tenant. We have examined the said notice and found that it is in the prescribed form and therefore complies with the foregoing provision of the applicable statute.

31. Section 7(1) of Cap 301, provides as follows;

“(1) Where under section 4 of this Act served a notice of termination of a controlled tenancy on the tenant, the grounds on which the landlord seeks to terminate such tenancy may be such of the following grounds as are stated in the aforesaid notice—

- (a) where, under the tenancy under which the tenant holds for the time being, the tenant has any obligations in respect of the repair and maintenance of the premises comprised in such tenancy, that the tenancy ought to be terminated in view of the state of repair of the premises, being a state resulting from the tenant's failure to comply with the said obligations;
- (b) that the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable;
- (c) that the tenant has committed other substantial breaches of his obligations under the tenancy, or for any other reason connected



with the tenant's use or management of the premises comprised in the tenancy;

- (d) that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including
- (e) that the tenancy was created by the subletting of part only of the premises comprised in a superior tenancy of which the landlord is the owner of interest in reversion expectant on the termination of that superior tenancy, and that the aggregate of the rents reasonably obtainable on separate lettings of such premises in parts would be substantially less than the rent reasonably obtainable on a letting of such premises as a whole, and that on the termination of the tenancy the landlord requires possession of such premises as a whole for the purpose of letting or otherwise disposing of the same as a whole;
- (f) that on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises;
- (g) subject as hereinafter provided, that on the termination of the tenancy the landlord himself intends to occupy for a period of not less than one year the premises comprised in the tenancy for the purposes, or partly for the purposes, of a business to be carried on by him therein, or at his residence."

- 32. It is to be noted that the tenant is accused of committing various breaches of his obligations under the tenancy contract which squarely fall within clause (C) of the aforesaid legal provision. They include unauthorized alteration of the building, harassment of the landlord's agents and employees, unauthorized disposal of garbage, failure to pay utility bills, refusal to pay a security deposit in regard to the premises and interference with the building's meter box including padlocking it thus denying the landlord access thereto.
- 33. The said breaches are evidenced by the various emails and other correspondence exchanged between the parties which clearly depict a tenant who is not ready and willing to play by the tenancy rules. We have no reason to disbelieve the landlord.
- 34. Section 6(1) of Cap 301, Laws of Kenya provides as follows;

"

- "(1) A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) of this Act that he does not agree to



comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal:

Provided that a Tribunal may, for sufficient reason and on such conditions as it may think fit, permit such a reference notwithstanding that the receiving party has not complied with any of the requirements of this section.”

35. The tenant herein filed a Complaint dated 22nd May 2024 under Section 12(4) of Cap 301, Laws of Kenya. Although he denies that a proper notice was served upon him, we have already found that indeed one was served via email. He did not file a reference to challenge the notice as envisaged under Section 6(1) of Cap 301 and a Complaint under Section 12(4) of the said statute cannot be treated as a reference under the former provision.

36. Section 10 of the said statute provides as follows;

“Where a landlord has served a notice in accordance with the requirements of section 4 of this Act, on a tenant, and the tenant fails within the appropriate time to notify the landlord of his unwillingness to comply with such notice, or to refer the matter to a Tribunal then subject to section 6 of this Act, such notice shall have effect from the date therein specified to terminate the tenancy, or terminate or alter the terms and conditions thereof or the rights or services enjoyed thereunder.” (emphasis added).

37. In the case of *Saheb v Hassanally* [1981] eKLR, the Court of Appeal analyzed the foregoing legal provision and held as follows;

“In my opinion, it is clear that under the terms of section 10, if a valid notice is not referred, the landlord is entitled to possession without having to prove any of the statutory grounds relied upon in the notice.

To be valid, a tenancy notice must comply with the provisions of section 4, including the requirements of the use of the prescribed form, of setting out the statutory grounds for relief and of due service. The learned judge was wrong in this case to investigate the grounds relied upon in the notice, but even then, he should have given judgment for the appellant on the ground that was conceded, namely that the landlord required the occupation of the premises for the purposes of his business (section 7 (1) (g)). The learned judge was in error in not awarding possession of the premises to the appellant in accordance with section 10, without making any inquiry into the validity of the grounds relied upon.” (emphasis added)

38. Based on the foregoing analysis, it is clear that the tenant cannot seek to challenge the grounds of termination of tenancy based on a Complaint under Section 12(4) of Cap 301 in absence of the reference envisaged under Section 6(1) of the Act.

Issue (b) Whether the tenant is entitled to the orders sought in the application dated 24th April 2024 and amended reference dated 22nd May 2024.

39. Through his amended reference dated 22nd May 2024, the tenant complains that the landlord has been interfering with his quiet and peaceful occupation of the business premises by unlawfully issuing threats of eviction, threats aimed at compelling him to sign a tenancy agreement without consensus ad idem, denial of relevant documents to apply for own electricity from the relevant government agency and disconnecting electricity supply to his business premises.



40. The landlord on the other hand has demonstrated that the tenant has committed various breaches of the tenancy agreement. The tenant was served with a notice to terminate his tenancy but failed to challenge it in the manner stipulated by the law. He cannot now seek to be protected by this Tribunal as he has failed to do equity. It is trite law that he who seeks equity must do equity.
41. The tenant approached this Tribunal seeking for restraining orders against the landlord from evicting or interfering with his occupation of the suit premises pending hearing of the application inter-partes. The said orders were granted ex-parte and there is nothing left to deal with at this stage as the prayer is already spent. In view of the foregoing, the tenant's reference is a candidate for dismissal.

Issue (c) Whether the tenant has any outstanding electricity bills owing to the landlord and garbage collection charges.

42. The landlord in her filed submissions claims that the tenant owes a sum of Kshs 51,743.40 in unpaid electricity bills. The landlord has exhibited email correspondence showing that she has kept the tenant informed about his indebtedness in that regard. The landlord has explained that although there is only one electricity meter for the whole building, it has a special capacity to assign bills for each room occupied by her various tenants. A tabulation of the bills has been attached to the landlord's various affidavits. The tenant has not provided any contrary readings on which he based his payment of the amount remitted to the landlord.
43. The landlord further claims a sum of Kshs 11,500/= in respect of special garbage disposal arising from construction works carried out in the suit premises. The tenant is accused of failing to cart away the waste materials which resulted from reconstruction of the alterations illegally effected on the suit premises. As a result, the landlord spent the said amount towards special collection of the refuse materials. A receipt for the expenditure as well as photographic evidence thereof is annexed to the landlord's replying affidavit.
44. Since prove in civil cases is on a balance of probabilities, we find and hold that the landlord has been able to discharge the said burden on the amount owing in respect of outstanding electricity bills and garbage collection charges.

Issue (d) Who shall bear the costs of the suit?

45. As regards costs, the same are in the Tribunal's discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall award costs to the landlord/respondent.

C. Orders

46. Given the above analysis, the following final orders commend to us under Section 12(4) of Cap 301;
- a. The Notice to terminate tenancy dated 24th April 2024 is hereby upheld and the tenant's tenancy in respect of the suit premises is hereby terminated.
 - b. The tenant's application dated 24th May 2024 is already spent.
 - c. The tenant's amended reference dated 22nd May 2024 is hereby dismissed with costs.
 - d. The tenant shall vacate the suit premises within the next 30 days and in default shall be forcibly evicted therefrom by a Licensed Auctioneer who shall be provided with security by the OCS Central Police Station.



- e. The tenant is liable to pay to the landlord electricity bills arrears of Kshs 51,743.40 and the special refuse collection charges of Kshs 11,500/=.
- f. The tenant shall pay costs assessed at Kshs.30,000/-to the landlord.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH SEPTEMBER 2024

HON. GAKUHI CHEGE

PANEL CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

HON. JOYCE A OSODO

MEMBER

In the presence of:

Odero for the tenant

Nyauchi for the landlord

