



Lusinde & another v Meemic Properties & 2 others (Tribunal Case E302 of 2024) [2024] KEBPRT 1421 (KLR) (14 August 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1421 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E302 OF 2024
CN MUGAMBI, CHAIR
AUGUST 14, 2024**

BETWEEN

GODFREY LUSINDE 1ST APPLICANT

AYOYI LUKALO 2ND APPLICANT

AND

MEEMIC PROPERTIES 1ST RESPONDENT

ANGELLAH KISALU 2ND RESPONDENT

GRACE NYAMBURA GIKONYO 3RD RESPONDENT

RULING

1. The Tenants Application dated 1.3.2024 seeks the following orders;-
 - a. An order directing the Respondents to re-open the suit premises and reinstate the Tenants in default of which the Tenants be allowed to break into the suit premises with the assistance of the OCS, Kangemi police station.
 - b. An order that the Respondents be ordered to accept the monthly rent in default of which the Tenants be allowed to deposit the same in court.
 - c. That the Respondents be restrained from letting out the premises to another Tenant and further be ordered to allow the Tenants unlimited access to the suit premises; or from in any other manner whatsoever interfering with the Tenants occupation and lawful enjoyment of the suit premises.



The Tenants depositions

2. The Tenants Affidavit in support of their Application sworn by Ms. Ayoyi Lokalo may be summarized as follows;-
 - a. That the Tenants have been running a butchery business t/a Ayoyi Butchery in the suit premises since July 2023 at a monthly rent of Kshs. 10,000/= and they do not have any rent arrears.
 - b. That the Respondents have issued the Tenants with an illegal notice to vacate the premises and proceeded to lock the suit premises illegally.
 - c. That the Respondents have further refused to accept rent and have removed Mpesa transactions for the payment of rent in a bid to evict the Tenants and give out the suit premises to another Tenant.

The Landlord's depositions

3. The Replying affidavit sworn by Ms. Grace Nyambura Gikonyo may be summarized as follows;
 - a. That the 2nd Applicant is a total stranger to the Landlord as he is not a Tenant in the suit premises.
 - b. That the 1st Tenant has sublet the suit premises to the 2nd Tenant illegally and therefore there does not exist a Landlord/Tenant relationship between the Landlord and the 2nd Tenant.
 - c. That the 1st Tenant last paid rent in July 2023.
 - d. That the Tenants have devised a scheme whereby the 2nd Tenant sends money to the 1st Tenant to pay to the Landlord in order to deceive the Landlord that the 1st Tenant is still in the premises.
 - e. That upon realizing that the 1st Tenant had sublet the premises, the Respondent/Landlord reported the matter to the chief and thereafter issued a notice to vacate to the 2nd Tenant.
 - f. That the 2nd Tenant/Applicant illegally broke into the suit premises and thus was reported to the police by the Landlord.

Analysis and determination

4. The issues that arise for determination in this Application are in my view the following;-
 - a. Whether there exists a landlord and Tenant relationship between the 2nd Tenant/Applicant and the Landlord?
 - b. Whether the Tenant is entitled to the orders sought in his Application.

Issue A: Whether there exists a landlord and Tenant relationship between the 2nd Tenant/Applicant and the Landlord?

5. The 2nd Tenant/Applicant has deponed in his affidavit that they have been running a butchery business in the suit premises t/a Ayoyi Butchery from the year 2023. The Landlord on her part has denied any knowledge of the 2nd Applicant whom she describes as a total stranger and that she only recognizes the 1st Applicant/Tenant as the "tenant". It is the Landlord's further deposition that the 1st Tenant last paid rent in July 2023. This date coincides with the date the 2nd Tenant depones to have started the



business called Ayoyi Butchery on the suit premises. It is therefore clear that the 2nd Tenant has been in the said premises since July 2023 and although the Landlord does not make any claims for rent against the 2nd Tenant, yet she reported her to the chief and issued a notice to vacate to the 2nd Tenant. Whereas it is not clear at this stage how the 2nd Tenant came to be in the suit premises, it is clear that by the time he filed this suit, he had been in the suit premises for about eight months. The Landlord has not specifically denied receiving rent from this Tenant and it is doubtful that the Landlord could have taken no steps in executing for rent unpaid for eight months. I think in the circumstances, it is not possible to determine with certainty at this stage whether the 2nd Tenant is a Tenant of the Landlord or whether the 2nd Tenant illegally sublet the suit premises from the 1st Tenant. I would therefore order that this position be subjected to a full hearing during the determination of the Complaint filed by the Tenants.

Issue B: Whether the Tenant is entitled to the orders sought in his Application

6. I have already pointed out that the issue of the legal status of the tenancy between the 2nd Tenant and the Landlord can only be determined during the hearing of the Complaint. The Tenant has deposed that he is not in any rent arrears and save the Landlord stating that the 1st Tenant last paid rent in July 2023, the said Landlord does not raise any claim as to rent arrears against the 2nd Tenant.
7. The Tenants being in possession of the suit premises and the Landlord having not established any claim against them for rent arrears, it is in the interest of justice that the Tenants Application be allowed pending the hearing and determination of the Complaint filed by the Tenants.
8. Consequently, I allow the Tenants' Application dated 1.3.2024 in terms or prayers 2, 3, 4, 5, 6 and 7 thereof. Costs will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF AUGUST, 2024.

HON. CYPRIAN MUGAMBI - CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Gichuru for the Landlord and in the absence of the Tenant

Court: Reference be heard on 3.10.2024. Hearing notice to issue

