



**Karuku v Njoroge (Tribunal Case E106 of 2022)
[2023] KEBPRT 364 (KLR) (Civ) (6 June 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 364 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E106 OF 2022
A MUMA, VICE CHAIR
JUNE 6, 2023**

BETWEEN

GEOFFREY MUNYUA KARUKU APPLICANT

AND

TERESIA NJOROGE RESPONDENT

RULING

A. PARTIES & THEIR REPRESENTATIVES

1. The applicant, Geoffrey Munyua Karuku, is the tenant occupying the Premises at Kayole-Naivasha within Nakuru County (hereinafter “the tenant”).
2. The tenant is appearing in person in this matter.
3. The respondent herein is the Landlady of the Premises that is the subject matter of the present suit. (hereinafter “the Landlady”).
4. The 1st respondent appears in person in this matter.

B. DISPUTE BACKGROUND

5. Through a Reference dated June 2, 2022 and a Notice of Motion dated August 30, 2022, the tenant moved this honourable Tribunal seeking among other Orders, that the Tribunal restrain the Respondent from illegal detention of the Tenant’s tools of trade and/or interrupting with the Tenant’s quiet enjoyment, use, occupation, closing, distressing, or interfering with the tenant’s occupation. Additionally, that the police officers be directed to assist in compliance with these Orders.
6. Vide an Order issued on September 7, 2022, the Tribunal certified the matter as urgent, issued an Order for injunction restraining the respondent from the continued illegal detention of the Tenant’s



tools of business and/or interrupting the applicant's quiet enjoyment, use, occupation, from accessing, entering into, closing and/or shutting down, attaching, distressing, carting away goods, equipment, material and/or in any other way harassing or interfering with the Tenant's occupation of the suit premises. The Tenant was further directed to serve the Landlady for virtual hearing on October 19, 2022.

C. The Applicant's Case

7. The said Reference by the applicant dated June 2, 2022 is supported by key grounds being that the suit premises has been closed and that tools of business detained by the Landlady.
8. In support of his case, the applicant has sworn a supporting affidavit dated August 30, 2022. In the affidavit, he stated the context of the background of the suit and provided pertinent evidence thereof.
9. He deposed that they entered into an oral agreement with the respondent over the suit premises. That as per the said agreement, the monthly premium was determined to be KShs. 7,000.00 plus KShs. 200 payable for electricity bills.
10. He deposed that He had been sending all monthly rent to the Landlord, herein the respondent.
11. He further averred that they had an agreement with the Landlady to make improvements on the suit premises at his cost which would later be refunded by the Landlady.

D. The Respondent's Case

12. In his replying affidavit dated November 30, 2022, the Landlady deposed that the Tenant failed to disclose the full information as to the status of the tenancy and stated that the tenant had moved out of the suit premises and in fact sublet to another person.
13. In response to the improvements made to the suit premises, the Landlady averred that the same were statutorily required for one to be issued with a Licence to operate any eatery.
14. She denied allegations that the suit premises had been locked by him. He stated that the Tenant herein had left the premise to his wife who later on sublet to another person not a party in these proceedings.
15. Further, she averred that there exists to Landlord-Tenant relationship for the reasons that both the applicant and the said sub-tenant vacated the suit premises which is now being occupied by a new tenant.

E. ISSUES FOR DETERMINATION

16. It is the contention of this Tribunal that the issues that fall for determination are:
 - i. whether there exists a tenancy relationship between the applicant and the respondent;
 - ii. Whether the Tenant is entitled to the cost incurred in improvement of the suit premises.

F. Analysis and determination

a. Whether there exists a tenancy relationship between the Applicant and the Respondent

17. The applicant in his pleadings claim that tenancy relationship between himself and the landlady is still in subsistence.
18. On the other hand, the respondent in her replying affidavit averred that the tenancy relationship between herself and the Applicant lapsed. That there is a new tenant in the suit premises.



19. Whether or not there still exists a tenancy relationship is a question of fact.
20. I clearly note from this Tribunal's proceedings on April 5, 2023 that the tenant is no longer in the suit premises. Their relationship was terminated when the tenant left the premises.
21. Thus, it is my finding that there exists no tenancy relationship between the parties herein.

b. Whether this Tribunal has Jurisdiction to assess and order for damages

22. Jurisdiction of this Tribunal stems from the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya. Section 12 (4) provides:

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.

23. The above provision accords the Tribunal additional powers to investigate any complaints relating to controlled tenancies and make orders as they deem fit. In the present case, despite the fact that the Tenant is no longer in the premises, the suit matter originated at a time when a tenancy relationship still existed between the parties. Additionally, the tenancy relationship of the parties herein was a controlled tenancy in accordance with section 2 of the Landlord and Tenants (Shops, Hotels and Catering Establishment Act), cap 301 of the laws of Kenya.
24. Further, the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya Act at section 12 (1) (l) accords the Tribunal as one of its powers the Jurisdiction to;

“Award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill, and improvements carried out by the tenant with the landlord's consent;”

25. It is the tenant's case supported by various evidence of payments that they entered into an agreement to improve the premise at his costs which would later be indemnified by the Landlady.
26. On the other hand, citing *Public health Act*, the Landlady deposed that tenant decided to make improvement on the suit premises in order to comply with the requirements of being awarded a license to operate an eatery.
27. I am persuaded to agree with the position by the Landlady on the point of the law that it is a requirement for any eatery to comply with requirements under the said Act. As such the renovations done by the tenant were a necessity and the Costs should not be vested on the Landlord.
28. Various courts have now settled the issue of costs incurred by the tenant on the premises.
29. In the case of *Interstate Trade Company v Registered Trustees of Catholic Archdiocese of Mombasa* [2022] eKLR, the Honourable Tribunal while finding that it would be proper for the Tribunal to allow tenant to be compensated for the costs incurred during renovation stated that:

“20. Owing to the substantial amounts incurred by the Tenant, the Tribunal is convinced that there is a need to secure the interests of both parties upon evaluation and assessment by the Tribunal as to the nature of the renovations carried out by the Tenant what qualifies to be deducted from rent.”



30. The tenant has produced before this Tribunal evidence of payments made towards improvements of the suit premises totaling to KShs. 32,180.00. Having perused the file and the receipts annexed I am not convinced that the improvements warrant any compensation by the Landlord. The improvements done do appear to be the basic improvements necessary to run the eatery which would ideally be the responsibility of the Tenant to put in place. Nothing of a capital nature.
31. In light of the foregoing, I find that the Tenant is not entitled to the costs incurred during the improvements of the suit premises. They are however entitled to the refund of Kshs. 14,000.00 as ordered by the Tribunal on March 7, 2023.

G. ORDERS

- a. The upshot is that the Tenant's Reference dated **September 2, 2022** and the Application dated August 30, 2022 are allowed partially.
- b. The Tenant is awarded **Kshs. 14,000.00** being the refund as ordered on **March 7, 2023**, to be paid within **30** days from the date hereof.
- c. Improvements on the suit premises do seem not to warrant any damages.
- d. Each party to bear their own Costs.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. MUMA THIS 6TH DAY OF JUNE 2023 IN THE PRESENCE OF GEOFFREY MUNYUA THE TENANT IN PERSON AND IN THE ABSENCE OF THE LANDLORD.

HON. A MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

