



**Fundi v Ochieng (Tribunal Case E148 of 2024)  
[2024] KEBPRT 1226 (KLR) (30 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1226 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E148 OF 2024  
A MUMA, MEMBER  
AUGUST 30, 2024**

**BETWEEN**

**HILDA FUNDI ..... APPLICANT**

**AND**

**BRAMWEL OCHIENG ..... RESPONDENT**

**RULING**

**A. Parties And Representatives**

1. The Applicant, Hilda Fundi is the owner of the business premises located in Jomvu within Mombasa County the suit property (hence the Landlady).
2. The applicant is acting in person.
3. The Respondent, is the occupant of the suit property located in Jomvu within Mombasa County (hence the Tenant).
4. The firm of Kitoo, Bosco & Associates Advocates is on record for the Respondent.

**B. Background Of The Dispute**

5. The Landlady moved this tribunal vide a Reference and Notice of Motion Application dated 4<sup>th</sup> June 2024 seeking for; the application to be certified urgent, the tenant to be ordered to open the premises which he had superimposed a padlock and left, that pending the hearing of the application the tribunal to make orders for the tenant to settle the outstanding rent arrears for the months of December 2022 to May 2024 totaling to KShs.108,000.
6. The Tribunal issued orders dated 4<sup>th</sup> June 2024 and set the application for inter partes hearing on 28<sup>th</sup> June 2024 as well as issuing orders for service to be effected.



7. The tribunal upon hearing inter partes hearing on 25<sup>th</sup> July 2024 issued orders that the tenant reopens the premises immediately if he is the one who closed it which he denies, failure to which the Landlady will be at liberty to break in and take vacant possession and re-let the premises to another tenant with the assistance of the OCS Jomwa Police station. The tribunal then set a date for a ruling on rent arrears if any.

### **C. The Landlady's Claim**

8. The Landlady claims avers that the tenant locked the business premises using a padlock and left which has prevented the landlady from renting out the premises to other tenants.
9. She further avers that the Tenant has not paid rent since December 2022 and is therefore in arrears of Kshs.108,000.
10. It is therefore the Landlady's case that the Tenant's action to lock the premises is illegal and hindering the running of her business and that the rent arrears are detrimental to her business and livelihood.

### **D. The Tenant's Claim**

11. The Tenant claims that he had rented the premises to use during his campaigns in the year 2022 and that he vacated the premises and did not leave any padlock on the door.
12. He further claims that he had been paying the agreed upon rent of KShs.6,000 per month and had informed the chairman of the welfare association managing premises as he was vacating.

### **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 reopen the premises
  - b. Whether there are rent arrears owed

### **H. Analysis & Determination**

#### **a. Whether the tenant should reopen the premises**

14. The issue had been brought up in the Landlady's application dated 4<sup>th</sup> June 2024 where she claimed that the Tenant had superimposed a padlock on the premises and left. The tribunal addressed this issue and granted orders on 25<sup>th</sup> July 2024 for the tenant to reopen the premises if they placed the padlock which they deny, failure to which the landlady was at liberty to break into the premises and take vacant possession and re-let the premises to another tenant with the assistance of the OCS Jomwa Police station.

#### **b. Whether there are rent arrears owed**

15. Section 107(1) of the [\*Evidence act\*](#) states that;
- “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
16. The tribunal notes that the Landlady claims Kshs.108,000 in arrears but has not provided any evidence of payment or lack thereof such as a statement of accounts or bank statements to that effect.



17. In line with Section 107 as quoted earlier and Section 109 of the [Evidence Act](#) which stipulates that;
- “The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person”,
18. The Landlady has not provided any evidence proving that the Tenant is in arrears.
19. Therefore, based on the above, it is this Tribunal’s view that the Landlady has failed to prove their case on the issue of arrears.
20. It is also my considered opinion that the premises appears to have been used for campaigns in 2022 and fully paid for. It was thereafter handed over to one Lawrence who is known to the Landlady as she referred to him as a colleague.
21. The Tenant and Landlady actually met for the first time in court as such any physical handover would have proofed difficult I therefore tend to belief the Tenants story that he handed over the premises to the Landlords agents and or one Lawrence a tenant cannot be penalized for a miscommunication between the Landlord and the agents on the ground and this Court therefore finds that there are no rent arrears owing as the premises were duly handed over.

#### **I. Orders**

22. The upshot is that the Landlady’s Reference and Application dated 4<sup>th</sup> June 2024 are dismissed in the following terms;
- a. The Landlady to proceed as earlier ordered to take back the premises and re-let to another Tenant.
  - b. No orders as to costs.

**HON. A MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 30<sup>TH</sup> DAY OF AUGUST 2024 IN THE PRESENCE OF KITOO FOR THE TENANT AND HILDA FUNDI, THE LANDLADY IN PERSON.**

**HON. A MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

