



Bram Gases Limited v Mcneel Millers Limited & another (Tribunal Case E580 of 2024) [2024] KEBPRT 1478 (KLR) (11 October 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1478 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E580 OF 2024
P MAY, MEMBER
OCTOBER 11, 2024**

BETWEEN

BRAM GASES LIMITED APPLICANT

AND

MCNEEL MILLERS LIMITED 1ST RESPONDENT

AARON MWENDWA T/A BETABASE AUCTIONEERS 2ND RESPONDENT

RULING

1. The tenant/applicant commenced the present proceedings by filing a complaint dated 20th May, 2024 against the landlord for attaching their property. Contemporaneous with the complaint, the tenant filed an application on an even date under certificate seeking for orders of temporary injunction and return of the attached goods. The application was premised on the grounds set out on the face of the application and the further grounds elucidated in the supporting affidavit.
2. The application was placed before the Tribunal on 23/5/2024 whereby the tenant was granted interim orders pending the inter partes hearing. On 13th June, 2024 the tenant would file another application seeking to have the proclamation notice suspended and status quo maintained.
3. The landlord filed their response through the Replying Affidavit sworn on 5th August, 2024. The parties elected to canvass the pending applications simultaneously by way of written submissions. I have considered the submissions on record and would proceed as follows:

Tenant's case

4. The tenant acknowledged that they were in occupation of the demised premises by dint of the lease agreement entered between them and the 1st Respondent. The terms of the said agreement were mutually agreed by the parties. The tenant however accused the landlord of introducing illegal interests

hence skyrocketing the rent. The tenant stated that the vehicles which had been attached by the landlord were acquired through a credit facility offered by Sidian Bank.

5. The tenant stated that they may have fallen into rent arrears but the same was out of the factors beyond their control as the doctors' strike had affected their business. They therefore pleaded that the vehicles be released to allow them continue with their business operations.

Landlord's case

6. The landlord stated that the tenant had fallen into arrears and was a habitual defaulter. They were however quick to point out that the orders sought by the tenant were spent as the tenant had regularized the default hence forestalling the proclamation.

Analysis

7. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Chapter 301 Laws of Kenya (the "Act") provides for the statutory establishment of the Business Premises Rent Tribunal. The limits of the jurisdiction exercisable by the Tribunal are also explicitly set out therein. Section 12 of the Act grants the Tribunal its jurisdiction and provides that;

A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power—

- (a) to determine whether or not any tenancy is a controlled tenancy;

8. Section 2 defines a controlled tenancy as;

“a tenancy of a shop, hotel or catering establishment—

- a. which has not been reduced into writing; or
- b. which has been reduced into writing and which—
 - i. is for a period not exceeding five years; or
 - ii. contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof;”

9. It goes without saying, that for there to exist a controlled tenancy, in addition to the requirements provided in the Act above, there must be a clear Landlord and Tenant relationship which is clearly defined according to the terms of the tenancy agreement or implied from their conduct.
10. In the present dispute the parties have submitted to the jurisdiction of the Honourable Tribunal. Save for the orders for review of rent and rendering accounts, the rest of the orders are spent. Cap 301 places obligations on a landlord which include a duty to keep a rent book. The landlord should therefore supply the tenant with an updated statement of accounts.
11. During the pendency of the present proceedings the landlord issued the tenant with a notice to terminate tenancy dated 19/6/2024. The grounds set out for terminating the tenancy was that the tenant is in arrears. Having then acknowledged that the tenant had regularized the rent arrears and was no longer in default, the notice is defective.
12. On the application by the tenant to assess rent, the tenant has to approach the Tribunal in the manner prescribed under CAP 301.

13. In the end the following orders commend itself:

- a. The landlord shall file and serve an updated statement of accounts within 7 days from the date hereof.
- b. The tenant shall be allowed to enjoy quiet possession of the demised premises. The tenant shall honour their obligations.
- c. The complaint dated 20/5/2024 is settled on similar terms
- d. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY OF OCTOBER, 2024.

HON. PATRICIA MAY - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

**DELIVERED IN THE PRESENCE OF MBECHE FOR THE LANDLORD AND IN THE
ABSENCE OF THE APPLICANT**