



**Njoroge v Mwangi (Tribunal Case E007 of 2024)
[2024] KEBPRT 852 (KLR) (14 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 852 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E007 OF 2024
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
MAY 14, 2024**

BETWEEN

SYRUS KIHUMBA NJOROGHE APPLICANT

AND

LEAH NYAMBURA MWANGI RESPONDENT

RULING

A. Dispute Background

1. The tenant/applicant moved this tribunal vide a reference under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301, dated 12th January, 2024 with a complaint that the landlord had issued an illegal verbal notice to him to vacate the suit premises without any valid reason and locked the washrooms of the premises.
2. The tenant/applicant filed a Notice of Motion under a Certificate of Urgency dated 12th January, 2024 wherein he sought for the following orders; -
 - i. That the application be certified urgent.
 - ii. That the Tribunal orders the respondent/landlord to re-open the locked washrooms to allow the applicant access to it and failure to do so, the applicant be allowed to break the locks and gain access with the assistance of the O.C.S Gilgil Police Station pending hearing inter-partes.
 - iii. That the landlord/agents/servants be restrained from harassing, intimidating and illegally evicting and or interfering with the applicant's peaceful occupation of the suit premises.
 - iv. That the landlord be restrained from illegally increasing rent and be compelled to accept the current rent pending hearing inter-partes.
 - v. That the O.C.S Gilgil police station to ensure compliance of the orders.



- vi. That the costs of the application be provided for.
3. The application is supported by an affidavit of even date in which the applicant deposes as follows; -
- i. That the parties entered into an agreement on 11th August, 2009 pursuant to which he leased the property at a monthly rent of KES. 15,000 which he has been paying regularly and has no rent arrears.
 - ii. That on 10th January 2024, the landlord issued an illegal verbal notice to the applicant to vacate the suit premises without any valid reason.
 - iii. That the landlord has locked the washrooms contrary to public health requirements which will cause the business to be locked down.
4. On 16th January 2024, the court granted interim orders that the landlord re-opens the locked washrooms pending hearing inter-partes and also granted temporary orders of injunction against the respondent pending the hearing of the application inter-partes.
5. The respondent filed a replying affidavit dated 13th February, 2024 in which she deposes as follows; -
- i. That the tenant's supporting affidavit is full of falsehoods.
 - ii. That the respondent has not issued any verbal notice to the applicant to vacate the suit premises.
 - iii. That the washrooms to the demised premises are not locked as alleged. Photographs are annexed as "LNM (1)".
 - iv. That the rent payable is KES. 18,000 per month and not KES. 15,000 per month.
 - v. That the respondent has not issued any notice to increase rent and that the applicant was in arrears of KES. 36,000 being rent for January and February 2024.
 - vi. That the tenant is very abusive to the respondent who is elderly and has failed to maintain the washrooms in a habitable manner posing grave public health conditions.
6. At a court hearing on 15th March, 2024, the court directed that the matter be disposed of by way of written submissions and also directed that parties file and exchange rent account statements and the tenant was directed to continue paying rent to the landlord and in the event the landlord refuses the rent, the tenant to deposit the rent with the tribunal in the meantime.
7. The tenant/applicant filed a supplementary affidavit dated 30th April, 2024 in which he deposes as follows; -
- i. That the respondent in attempt to actualize her threats, blocked access to the washroom which she has set apart for use by the applicant and his customers and also rented out 2 corridors which were being used by all tenants to access the washrooms leaving the other tenants to use the applicant's business as the only access to the said washrooms thus putting the applicant's business at risk. Copies of photographs are annexed as "SKN I" and "SNK II(a)(b) and (c)".
 - ii. That the agreed monthly rent which the tenant has been paying is KES. 15,000. A copy of the tenancy agreement dated 11th August 2009 is annexed as "SKN III".
 - iii. That in March 2024, the applicant paid KES. 30,000 as rent to the respondent who returned the said money without any justification. A copy of the M-pesa statement is annexed as "SKN IV".



- iv. That the applicant has not been abusive to the landlord/respondent as claimed.
 - v. That the landlord has never complained to the applicant about the alleged state of the washrooms which are used by all tenants and/or customers.
8. The landlord/respondent filed a supplementary affidavit dated 7th May 2024 without leave of court and as such, the same will not be considered.
 9. Both parties filed their submissions with the applicant/ tenant filing his submissions dated 30th April 2024 and the landlord/respondent filing her submissions dated 8th May 2024. We shall consider both submissions while dealing with the issues for determination.

B. Issues for determination

10. The following are the issues for determination; -
 - a. Whether the tenant is entitled to the orders sought in the application dated 12th January 2024.
 - b. Who shall bear the costs of the application?

Issue (a) Whether the tenant is entitled to the orders sought in the application dated 12th January, 2024.

11. The tenant approached this tribunal seeking protection against illegal eviction from the suit premises as well as re-opening of the washrooms by the landlord/respondent. The issue of re-opening of the washrooms is already spent.
12. The tenant/applicant in his submissions as well as supporting affidavit dated 12th January 2024 states that on 10th January, 2024, the landlord issued an illegal verbal notice to the applicant to vacate the suit premises without any valid reason and has since been frustrating the tenant.
13. On the other hand, the respondent in her replying affidavit dated 13th February, 2024 has denied issuing any verbal notice of termination of tenancy and in her written submissions refers to the same as mere allegations by the tenant.
14. There being no valid notice to terminate tenancy, we find that the tenant/applicant is entitled to the orders sought for protection against any illegal eviction and or interference by the landlord/respondent.
15. An issue of the rent payable arises as the landlord in her replying affidavit deposes that the rent payable is KES. 18,000 and not KES. 15,000 as contended by the tenant. She also deposes that she has not issued any notice to the applicant to increase rent and that the applicant is in arrears.
16. Additionally, the landlord has not adduced any evidence that the tenant herein has been paying the said rent of KES. 18,000.
17. The tenant on the other hand has deposed in his affidavits that the agreed rent is KES. 15,000 and has annexed a tenancy agreement dated 11th August 2009 which indicates an agreed rent of KES. 15,000. This tribunal shall be guided by the said agreement as it is evident that the same was signed by both parties herein.
18. Additionally, the tenant/applicant has shown proof of payment of KES. 30,000 which was returned by the landlord/respondent.



19. The tenant in his written submissions directs the tribunal to Section 4 (1) and (2) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) (CAP. 301 Laws of Kenya) which provides thus:-

- “(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall 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 the following provisions of this Act.
- (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.”

20. In light of the foregoing analysis, we find that the agreed monthly rent between the parties is KES. 15,000 as per the tenancy agreement dated 11th August 2009. We shall therefore order that the tenant continues to pay the said monthly rent as and when it falls due until the parties agree on a new monthly rent or the landlord/respondent issues a legal notice to alter the terms of tenancy according to Cap 301, Laws of Kenya.

Issue (b) Who shall bear the costs of the application?

21. 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 order costs of the application to the tenant/applicant.

C. Orders

22. In conclusion, the following final orders commend to us; -

- a. The application dated 12th January 2024 is hereby allowed as prayed.
- b. The reference dated 12th January 2024 is settled in terms.
- c. The tenant shall continue to pay the landlord the monthly rent of KES. 15,000 as and when it falls due including any rent arrears.
- d. The tenant shall not terminate or alter the terms of tenancy in accordance with Cap 301 Laws of Kenya
- e. Costs of KES. 25,000 to the tenant/applicant to be offset against the rent account.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH MAY 2024

HON. JOYCE AKINYI OSODO - (PANEL CHAIRPERSON)

HON GAKUHI CHEGE - (MEMBER)

BUSINESS PREMISES RENT TRIBUNAL

In the presence of:

Ms. Wanjiru holding brief for Mr. Mwangi for respondent/landlord

Mr. Ouma for the tenant/applicant

