



**Muteithia v Wariara (Tribunal Case E040 of 2024)
[2024] KEBPRT 1736 (KLR) (13 December 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1736 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E040 OF 2024
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
DECEMBER 13, 2024**

BETWEEN

ERIC MUTEITHIA TENANT

AND

LYDIA WAMBUI WARIARA LANDLORD

JUDGMENT

A. Dispute Background

1. The tenant/applicant moved this Tribunal vide a reference dated 13th January 2024 under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 with a complaint that the respondent disconnected electricity at the suit premises damaging three machines in the process and that the respondent had started interfering with his quiet and peaceful occupation of the suit premises without any justifiable basis.
2. The tenant/applicant filed a Notice of Motion under a certificate of urgency dated 13th January, 2024 which was allowed through a ruling delivered on 24th May 2024 pursuant to which the reference was ordered to proceed to hearing on merit with the parties being directed to comply with Order 11 of the Civil Procedure Rules. The parties were also directed to file and exchange rent account statements together with evidence of rent payment. The costs of the application were ordered to abide the outcome of the reference.
3. The landlord in response to the tenant's reference filed a cross reference stating that she intends to construct and develop the whole section of the leased land which she cannot reasonably do without obtaining possession of the premises from the tenant.
4. She accuses the tenant of consistent and continuous delay in paying rent and that he tenant's business has caused other tenants in the area to lose peaceful and quiet possession and enjoyment of their residences. She further accuses the tenant of not paying electricity on time causing disconnection of



- electricity to other tenants who pay on time and hence cannot enjoy peaceful and quiet possession of their leased premises.
5. She also accuses the tenant of refusal to sign a new lease after expiry of the old lease and further accuse him of being problematic and refusal to peacefully co-exist with other tenants in the area hence affecting the landlord's business.
 6. The Landlord therefore seeks for this Court's leave to terminate the controlled tenancy and eviction of the tenant from the premises in order to regain possession thereof.
 7. The parties were directed to comply with Order 11 of the Civil Procedure Rules, 2010 by filing witnesses' statements and documents in support of their respective cases.
 8. In compliance with the said directions, the tenant filed his own witness statement and that of one Stephen Mutave together with a list of documents dated 15th July 2024. The tenant also sought to rely on his further affidavit sworn on 27th March 2024. On the other hand, the landlord filed her witness statement dated 18th June 2024 together with a list of documents of even date.
 9. When the matter came up for hearing, both parties and the tenant's witness adopted the contents of their filed statements and documents and were thereafter subjected to cross examination.
 10. The tenant testified that he had occupied the suit premises for over six (6) years and that he had been faithfully and dutifully paying the monthly rent without fail.
 11. On 12th January 2024, his workshop supervisor, one Stephen Mutave informed him that the workshop did not have electricity, while all the other premises around had power. The tenant instructed his electrician one Isaac Omondi and the Supervisor to check the premises' power connections from the meter box located within the landlord's home compound.
 12. They were however denied access to check the meter whereupon it was discovered that the Landlord had disconnected the electricity supply resulting into damage of one machine motor that was operating when electricity was disconnected.
 13. It was the second instance of electricity disconnection by the Landlord with the first one having occurred in August 2023. During the earlier incident, three machine motors that were running at the time were destroyed after their cores got burned. The tenant repaired them at a cost of Kshs. 84,000/= but had not been connected by the date of recording his statement as some parts were irreparably damaged and needed to be imported from China.
 14. In the spirit of good neighborliness, the tenant decided not to pursue the case initially, but the gesture was not reciprocated. Therefore, the tenant decided to bring this matter before the Tribunal after the Landlord disconnected electricity for the second time. The tenant testified that he had sought for assistance from the Chief's office but his request was declined.
 15. Consequently, he fled an application before this Tribunal seeking orders for the reconnection of electricity, which were granted. The Landlord complied with the orders and electricity supply to the suit premises was restored on the evening of 16th January 2024. During the period when electricity was disconnected, the tenant incurred business losses as some clients chose to take their work elsewhere. The tenant also experienced delays in deliverables to clients and late payments to his workers and partners.
 16. The tenant stated that he has been paying his power bills on time, and the utility Company has never disconnected his electricity due to arrears. He obtained a statement from Kenya Power for the last year to show that there were no reconnection fees, as he has consistently been paying his bills on time. The



tenant produced the documents in his filed list including the receipt for Kshs 84,000/= attached to his further affidavit aforesaid.

17. The tenant's witness (Stephen Mutave) stated that he is the workshop Supervisor at Iron Timbers Limited, situated in Ngong Racecourse along Ngong Road, which belongs to the tenant herein. On 10th January 2024, he opened the workshop as usual at 8 O'clock and switched on the 3-phase and single-phase power connections so that the welders and woodworkers could start their day shift. He then realized that there was no power at the workshop. He went out and checked with the other surrounding shops and businesses and found out that they all had power.
18. He called the tenant and reported the situation. The tenant asked him to check the meter box located in the Landlord's compound. Upon knocking on the gate, the Landlord opened and he asked her if he could check the meter box. She refused him entry and remarked that there was no power and if they needed power, his boss should speak to her.
19. He therefore called his boss and gave him the feedback from the Landlord. The suit premises stayed without power for four days and it was only reconnected on the fifth day.
20. When electricity was reconnected, they noticed that it had destroyed another machine motor which needed to be repaired. This was not the first time the landlord had disconnected the electricity. In August 2023, she disconnected electricity, which destroyed the tenant's machine motors which cost Kshs. 84,000/= to repair. The said machines have not been functional as some parts were irreparable and require parts to be imported from China.
21. On her part, the landlord confirmed that she owns the suit premises located in Ngando along Ngong Road where the Complainant has been a tenant for about six (6) years. She testified that the tenant has been very problematic since 2022 when the two Lease Agreements lapsed.
22. Between 2016 and February 2022, the tenant used to pay rent in cash to her appointed agent by 5th of every month without fail. However, when the lease expired, she wanted to bring in a new agent and to sign a new agreement, but the tenant refused and began to frustrate her.
23. On or about 12th January 2024, electricity was disconnected at the Tenant's business premises due to rent arrears. She however denies that any machines were damaged by the electricity disconnection as they are all functional and therefore do not require any repair as alleged. The tenant resumed business and is currently using the machines and that it is not true that any machines were damaged by the electricity disconnection as they are all functional and did not require any repair as alleged.
24. According to the landlord, the tenant's continuous failure to pay rent on time as agreed by the 5th of every month has frustrated her life because this is the money she relies on to pay school fees for her children. She relied on the rent statement to prove that the tenant pays rent whenever he feels like.
25. She contends that she tried to resolve the dispute by involving the Area Chief but despite being summoned by the Chief, the tenant failed to attend. She accuses the tenant of frustrating her business because of the late payments of rent and disrupting other tenants.
26. The landlord pleads that she should not be punished for exercising her rights and powers against a problematic tenant. The tenant's business has caused other tenants in the area to lose peaceful and quiet possession and enjoyment of their residences.
27. It is the landlord's case that the tenant does not pay for electricity on time causing disconnection of electricity to other tenants who pay on time and hence cannot enjoy peaceful and quiet possession of their leased premises.



28. The tenant is accused of being problematic and of refusal to peacefully co-exist with other tenants in the area hence affecting the landlord's business.
29. The landlord denies that she has affected or interfered with the tenant's peaceful enjoyment of the premises as his business continues as usual without any interference. The landlord seeks to take back her property due to the frustrations by the tenant.
30. The landlord confirmed that the tenant had no rent arrears as at 29th April 2024 when she testified. She admitted having switched off the tenant's electricity to force him to sign a tenancy agreement with her agent after the tenant dishonored summons issued to him by the Chief.
31. After the close of both parties' cases, each filed written submissions. The tenant's submissions are dated 9th September 2024 while the landlord's submissions are dated 24th September 2024.

B. Issues For Determination

32. The following issues arise for determination; -
 - a. Whether the tenant is entitled to the reliefs sought in the reference dated 13th January, 2024.
 - b. Whether the landlord is entitled to terminate the tenant's tenancy as prayed in the cross reference.
 - c. Who shall bear the costs of the case?

Issue a) Whether the tenant is entitled to the reliefs sought in the reference dated 13th January, 2024.

33. The tenant/applicant approached this tribunal seeking for orders of injunction against landlord on the grounds that she had disconnected electricity to the suit premises thereby interfering with his peaceful enjoyment of the suit premises. Interim orders were granted pending hearing of the main reference.
34. The tenant has also sought orders for compensation in the sum of Kshs 84,000 for repair of machinery which were damaged due to disconnection of electricity by the landlord. The tenant has annexed to his further affidavit a receipt for the said repairs amounting to Kshs 84,000/=. The landlord on the other hand has stated in her evidence before this Tribunal that the said machinery that were allegedly damaged by the electricity disconnection are functional and do not require any repair as alleged.
35. The landlord admitted in cross examination and in her filed witness statement that the tenant's electricity supply had indeed been disconnected on account of his failure to pay rent. A receipt for repair of the damaged machinery for Kshs 84,000/= was produced in evidence without any objection. We have no reason to doubt the claim that the said machine was damaged during the August 2023 illegal disconnection. We find and hold that the landlord was not entitled to disconnect the tenant's electricity supply as a way of enforcing rent payment.
36. As regards the claim for Kshs 140,000/= for loss of business and Kshs 11,000/= as loss of three employees' wages, there is absolutely no evidence tendered to prove the same and we decline to award them.
37. In regard to general damages, this Tribunal is recognized as a Subordinate Court by dint of Article 169(1)(d) of *the Constitution* of Kenya, 2010 and is thus entitled to exercise the powers given to such Courts while dealing with matters before it. Further, Section 12(4) of Cap 301 provides as follows: -

“(4) 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.”

38. Having considered the evidence presented in this case, we find that the landlord was acting illegally when disconnecting the tenant’s electricity supply and as a result, the tenant’s business stopped for 4 days. In the circumstances, the tenant cannot escape an order for general damages. We shall award the tenant a sum of Kshs 50,000/= in general damages.

ISSUE b) Whether the landlord is entitled to terminate the tenant’s tenancy as prayed in the cross reference

39. The landlord’s cross reference for vacant possession against the tenant appears to be an afterthought. There is no notice for termination of tenancy served upon the tenant under Section 4(2) of Cap 301 by the landlord. In absence of compliance with section 4 of the said statute, we cannot grant the orders sought by the landlord. The cross reference is therefore a candidate for dismissal.

Issue (c) Who shall bear the costs of the case?

40. Costs of every action before this Tribunal are in our discretion under Section 12(1)(k)) of Cap 301 but always follow the event unless for good reasons otherwise ordered. We shall award costs to the tenant being the successful party.

C. Orders

41. In conclusion, the following final orders commend to us; -
- a. The tenant’s reference is allowed in terms prayer 6 of the application dated 13th January 2024.
 - b. The tenant is awarded general damages assessed at Kshs 50,000/= against the landlord for the illegal interference with his tenancy which shall be offset against the rent account.
 - c. The orders of injunction issued pursuant to the ruling of 24th May 2024 are hereby confirmed.
 - d. The landlord’s cross reference dated 18th June 2024 is hereby dismissed.
 - e. The tenant is awarded costs of the case assessed at Kshs 50,000/= to be offset against the rent account.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF DECEMBER 2024

HON. GAKUHI CHEGE

(PANEL CHAIRPERSON

HON. JOYCE AKINYI OSODO

(PANEL MEMBER)

In the presence of:

Musyoka holding brief for Odera for the tenant

Miss Chemutai for the Landlord

