



**Nzioka v General Realty Company Limited (Tribunal Case
E1060 of 2023) [2024] KEBPRT 311 (KLR) (5 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 311 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1060 OF 2023
P KITUR, MEMBER
APRIL 5, 2024**

BETWEEN

JANET NZIOKA TENANT

AND

GENERAL REALTY COMPANY LIMITED LANDLORD

RULING

A. Parties and Representatives

1. The Tenant is Janet Nzioka who rented from the Landlord the suit property herein. (hereinafter referred to as the Tenant)
2. The firm of Begi's Law Offices & Chambers Advocates represent the Tenant.
3. The Landlord is General Realty Company Limited and the proprietors of the suit property known as L.R No. 1148 located in Lavington, Nairobi (hereinafter referred to as the Landlord.)
4. The firm of Guandaru Thuita & Company Advocates represent the Landlord.

B. The Dispute Background

5. The Tenant filed a Complaint and a Notice of motion Application dated 26th October 2023 seeking for orders of injunction against the Landlord, His agents et al.
6. On 27th October 2023, this Honourable tribunal upon considering the Application, issued interim injunction orders ex-parte, pending hearing and determination of this Application and consequently set the Application down for hearing.
7. On 30th of October, the Landlord filed an Application under certificate of Urgency seeking that the interim orders issued on 27th October 2023 be set aside and that the Landlord be permitted to levy for distress of rent.



8. On 30th January 2024, the Landlord through their property manager filed a Replying Affidavit in which she stated that the Tenant was in arrears and therefore did not deserve the interim orders.
9. In their Replying Affidavit, the Landlord made reference to a Bankers Cheque which was allegedly issued by the Tenant for Kshs. 400,000/= but unfortunately the same was not honoured. Further reference was made to the statement of Account which indicated that the Tenant was in arrears.
10. Both Parties filed their respective submissions with respect to the two Applications for determination.

List of Issues for Determination

11. The main issues raised for determination are as follows;
 - a. Whether the Tenant is entitled to the Orders of Injunction sought.
 - b. Whether the Landlord should be permitted to levy for distress.

C. Analysis and Findings

Whether the Tenant is entitled to the prayer sought.

12. The Tenant, vide her Application dated 26th October 2023, approached this court seeking interim injunctions against the Respondent herein over the suit property alleging as follows: that the Landlord had interfered with her quiet possession; has evicted the Applicant from the premises; the Landlord has continued to harass and interfere with the delivery of her merchandise.
13. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of *Giella Versus Cassman Brown* (1973) EA 358. The conditions for the grant of an interlocutory are now, I think well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury in which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of probability.
14. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of *Nguruman Limited versus Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

“in an interlocutory injunction application the Applicant has to satisfy the triple requirements; establishes his case only at a prima facie level; demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favor.
15. Guided by the Court of Appeals holding, I wish to interrogate as to whether the Applicant has established a Prima Facie Case.
16. The case of *Mrao v First American Bank of Kenya Limited & 2 Others* [2003] eKLR defines a prima facie case as one which on the material presented in court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the respondent.
17. In a Tenancy Agreement, the Tenant is bestowed upon the duty to pay the rent as per the agreed terms. I have considered the submissions before this tribunal and it is clear that it is not in dispute that the



Tenant is in arrears. Equally, the Landlord has produced a statement of account indicating that the Tenants owes a total of Kshs. 1,231,200.00/=

18. The Honourable Tribunal was also brought to the attention that the Tenant in fact issued a bankers cheque of Kshs. 400,000.00 which was not honoured by the Bank
19. The Tenant has not refuted this claim.
20. The orders sought by the Tenant in the Application dated 26th October 2023 are equitable remedies and therefore make reliance to the decision in *Kyangaro v. Kenya Commercial Bank Ltd & another* [2004] 1KLR126 as cited in *Patrick Waweru Mwangi & Another v Housing Finance Co. of Kenya Ltd* [2013] eKLR at page 145 where the Court stated;

“Secondly, the injunction sought is an equitable remedy. He that comes to equity must come with clean hands and must also do equity. The conduct of the Plaintiff in this case betrays him. It does not endear him to equitable remedies. He who comes to equity must fulfil all or substantially all his outstanding obligations before insisting on his rights. The Plaintiff has not done that. Consequently, he has not done equity.”
21. It is therefore my considered opinion, in the foregoing that the Tenant is not deserving of the orders sought as she has not done equity herself.

Whether the Landlord should be permitted to levy for distress.

22. It is not in dispute that the Tenant is in arrears and the Landlord has brought forth a statement of Account to that effect.
23. The Landlord in his Application dated 30th October 2023 sought for orders Inter alia that he be allowed to distress for rent.
24. I have considered the prayers sought by the Landlord and I wish to be guided by the provisions of Section 3(1) of the *Distress for Rent Act*, Cap. 293, Laws of Kenya stipulates as follows: - “subject to the provisions of this Act and any other written law, any person having any rent or rent service in arrears and upon a grant, lease, demise or contract shall have the same remedy by distress for the recovery of that rent or rent service as is given by the Common Law of England in a similar case”.
25. Section 12(1) (h) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap. 301, Laws of Kenya gives this Tribunal power “to permit the levy of distress”
26. The Landlord has been gracious enough to accommodate the tenant by re-opening the premises to allow conduct of her business but the same has not been reciprocated by the tenant in their obligation to pay rent or clear their arrears.
27. Orders
 - a. The upshot is that the Tenants Complaint and Application dated 26th October 2023 is hereby dismissed.
 - b. The Landlord’s Application dated 30th October 2023 is allowed on the following terms:
 - i. That the Tenant pays the rent arrears of Kshs. 979,200/= as at 31st October 2023 together with any other accrued rent to date no later than 10th May 2024.
 - ii. That in default, the Landlord is at Liberty to distress for Rent.



- iii. The Landlord to give quiet possession to the Tenant during this period.
- c. Costs are awarded to the Landlord assessed at Kshs. 100,000/=.
- d. The Complaint dated 26th October 2023 is settled in those terms.

HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR THIS 5TH OF APRIL 2024 IN THE PRESENCE OF MS. WANGUI FOR THE TENANT AND MS. GIKONYO FOR OF THE LANDLORD.

HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

