



**Algorithm Tech Limited v Quest Impex Limited (Tribunal Case
E450 of 2023) [2024] KEBPRT 453 (KLR) (5 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 453 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E450 OF 2023
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
APRIL 5, 2024**

BETWEEN

ALGORITHM TECH LIMITED TENANT

AND

QUEST IMPEX LIMITED LANDLORD

RULING

1. The tenant moved this Tribunal by way of a Reference/Complaint dated 5th May 2023 under Section 12(4) of the Landlord and Tenant (Shops, Hotels and Catering Establishments Act) Cap. 301, Laws of Kenya claiming that the Landlord had refused to effect major structural repairs in the business premises which had caused blocked lavatories. The tenant therefore sought that the landlord be enjoined from interfering with the tenancy and an order directing the landlord to effect the repairs.
2. The tenant simultaneously filed a motion of even date under section 3A of the *Civil Procedure Act* and Order 40 Rules 1,2,4 and 10 of the Civil Procedure Rules and all other enabling Provisions of the law seeking for orders;
 - a. THAT the application be certified as urgent, service thereof be dispensed with and the same be heard ex-parte at the first instance.
 - b. THAT the Respondent, either by themselves, their principals, agents, servants and/or anyone else be restrained by way of an injunction from levying distress, proclaiming, evicting and/or interfering with the Applicants quiet possession of the suit premises in whatsoever manner pending the hearing and final determination of the application.
 - c. THAT the Respondent be directed to effect the major structural repairs of the suit premises failure to which the rent payable equivalent to the costs of repairs be withheld by the Tenant.



- d. THAT an order does issue that the rent due and owing from the Applicant be deposited in court pending the hearing and determination of the suit herein.
 - e. THAT the costs of the Application be provided for.
 - f. THAT such orders that this Honorable Tribunal shall deem just.
3. The application is supported by the affidavit of Gitobu M'mbui and the following grounds;
- i. On or about 1st September 2022, the Applicant entered into a lease agreement with the Respondent for the lease of commercial space suitable for Go-down comprised in Title Number L.R No. 209/10802 for a period of 2 years.
 - ii. It was a term of the said lease agreement that the Applicant shall pay the Licensor the license fee of Kenya Shillings One Hundred and Twenty Thousand (Kshs 120,000/-) every month.
 - iii. Clause II of the said Lease Agreement provided that "the Licensor shall effect all major structural repairs at his own costs upon such defects being notified in writing by the licensee and in the event that the licensor fails to make such repairs within 30 days upon being notified, the licensee may make above repairs and can recover the same from the licensor as a debt. The amount owed shall accrue at an interest of 14% after lapse of 30 days after delivery of an invoice to the licensor demanding payment.
 - iv. THAT in violation of the said clause and despite the notification by the Applicant, the Respondent failed to repair the major structural defects including the leaking roof, dilapidated toilets and bathrooms.
 - v. Despite the assurance of the Landlord/Respondent that it would repair the floor and other major structural defects as at the date of the commencement of the lease and taking of possession of the premises, the Landlord has refused or declined to do so in flagrant violation of the terms of the lease.
 - vi. The Landlord continued with bad faith and demanded full rent from the Applicant despite the existing major structural defects that require repair which defects have greatly impacted on its operations and business.
 - vii. Despite compliance with the terms of the aforesaid Lease Agreement, the Landlord has consistently issued threats and intimidation of eviction and further refused to effect repairs of the major defects of the premises.
 - viii. Unless the Tribunal intervenes, the Applicant's operations and business was at risk of coming to a halt as a result of the Landlord's actions.
4. In his supporting affidavit, the Applicant's Director repeats the averments made on the face of the application and attaches the lease agreement as annexure "GM-1' and copies of email correspondence on the disputed repairs as annexure 'GM-2".
5. Despite the assurance of the Landlord/Respondent that it would repair the floor and other major structural defects as at the date of the commencement of the lease and taking of possession of the premise, the tenant contends that the Landlord refused or declined to do so in flagrant violation of the terms of the lease.



6. The Landlord is accused of having continued in bad faith to demand full rent from the Applicant despite the existing major structural defects that required repair which defects had greatly impacted on the Applicant's operations and business.
7. Interim orders were given ex-parte by this Tribunal on 8th May 2023 pending hearing inter-partes on 6th June 2023.
8. The landlord in response filed a motion dated 19th May 2023 under certificate of urgency in which it sought for the following orders that the Applicant be ordered to immediately pay Kshs 232,200 rent for the months of April and May 2023 due to the Respondent and to continue depositing the same to the Respondent's account pending the hearing and determination of the suit and in the event the applicant defaults, the honorable Tribunal gives permission to the Respondent/landlord to levy distress for rent.
9. The application is based on the following grounds: -
 - a. The Respondent has never had any intentions of evicting the Applicant or interfering with his use of the premises and gave guarantee that it intended to abide by all the orders issued pending hearing and determination of this matter.
 - b. The Respondent had not refused to receive rent from the Applicant who was withholding the same with no justifiable cause.
 - c. The unclarified issue in the order is the rent due as the applicant had not paid the Respondent two months' (April and May) rent of Kshs 232,200 which he was withholding without lawful cause.
 - d. Whilst the Respondent undertook to adhere to the orders granted, it requested for additional orders as to rent to the orders issued on 8th May 2023.
 - e. The rent due/demanded was not an issue raised in the application pending for determination before this court but who was to take responsibility for structural repairs or how the structural repairs were supposed to be done.
 - f. The rent was due on 5th April and May 2023, the Applicant had not paid any rent to the Respondent whilst he is still using and profiting from the demised premises of the Respondent and as such, he approached this court with unclean hands.
 - g. According to the landlord, the costs for repairs was roughly Kshs 50,000 and as such, the withholding of Kshs 232,200 rent by the Applicant was not in good faith, it was unjustifiable and unreasonable.
 - h. There was no clause in the lease agreement that allows the tenant to withhold rent.
 - i. The Respondent had urgent financial obligations with various financial institutions and as such required the money to settle the same.
 - j. The demised premises are the only source of income for the Respondent and non-payment of rent by the Applicant was bringing unnecessary hardship to him.
 - k. The Respondent had in good faith tried to ask the Applicant to even deduct part of the rent to go towards repairs and pay him the remainder but the Applicant had ignored his emails or send away persons who were sent by the Respondent to collect the cheque and as such there was a general feeling that there are other reasons for the Applicant's withholding of the rent.



- l. The Respondent believes that the entire court process is aimed at frustrating, punishing, and blocking him from receiving his rent as the tenant may not be having the money at hand and on several occasions had threatened the Respondent with taking him to this Tribunal and drag the matter for over a year to ensure the bank auctions the property
 - m. With the aim of frustrating the Respondent, the applicant prayed that the rent due to the Respondent be deposited into court so that he cannot access it yet rent was not an issue for determination before this court while the Applicant was profiting and doing business in the premises of the Respondent without paying a single cent.
 - n. Unless the Tribunal intervened and issue orders as to rent, the Applicant would continue withholding the Respondents rent without justifiable cause and would continue banking and relying on the injunctive orders issued to deny the Respondent rental income meant to meet his financial obligations which in the short run would cause unnecessary loan penalties and interest and in the long run cause realization of the demised premises as the Respondent was using it as security for loans from financial institutions.
10. The application was considered at the ex-parte stage and interim orders directing the tenant to pay outstanding rent were made pending hearing inter-partes on 6th June 2023.
11. On 6th June 2023, the matter came up in court and the tenant was authorized to repair the roof and unblock the toilet on condition that the same be notified to the landlord for approval of the cost thereof and filed in court in case of a dispute. The tenant was directed to clear outstanding rent for the months of April, May and June 2023 by 15th June 2023 failing which the landlord be at liberty to use lawful means to recover the same. The matter was directed to be mentioned on 4th July 2023.
12. The matter was again mentioned on 18th July 2023 when the tenant indicated that he had complied with the order for payment of rent and that the issue of repairs was still outstanding. The matter was therefore directed to be mentioned on 17th August 2023 to confirm repairs.
13. The tenant filed yet another motion dated 9th August 2023 under certificate of urgency seeking for the landlord's committal to civil jail for failure to abide with the orders of 18th July 2023. He also sought for orders that the landlord be summoned to personally attend court on all the appointed dates for hearing of the application. The same was directed to be served for hearing inter-partes on 17th August 2023 and both parties were directed to maintain status quo.
14. The Respondent filed a notice of preliminary objection to the application on the grounds the same offended section 7 of the *civil Procedure Act* as a similar application dated 4th May 2023 between the same parties and on the same issues had been filed by the Applicant which was scheduled for mention on 12th September 2023.
15. The landlord also filed an application dated 1st September 2023 seeking for an order for payment of the rent for August and September 2023 and in default be allowed to levy distress. The landlord also sought for setting aside of the orders of 31st August 2023. The application was certified urgent and directed to be served upon the tenant within three (3) days.
16. The application is opposed through the tenant's replying affidavit sworn on 11th September 2023 wherein it is deposed that he paid all outstanding rent and when he invited workmen to undertake repairs in the demised premises, the landlord chased them away. The landlord also illegally switched off electricity supply to the suit premises on 7th August 2023 at 10.30 am which occasioned business losses to the tenant.



17. On 10th October 2023, the landlord filed yet another application seeking that the tenant be ordered to immediately pay rent and service charge owed to the landlord. The landlord also sought to be allowed to use lawful means to recover the rent and service charge. The application was directed to be served for hearing inter-partes on 23rd October 2023,
18. On 13th October 2023, the tenant also filed an application seeking for restraining orders against the landlord from levying distress, proclaiming, evicting and/or interfering with his quiet possession of the suit premises together with an order granting uninterrupted and quiet access to him as ordered on 25th September 2023. The application was directed to be served for hearing inter-partes on 23rd October 2023.
19. On 16th October 2023, the tenant filed an amended application seeking the same orders as in the application dated 13th October 2023 but adding an alternative prayer for payment of damages for interruption of business occasioned by the landlord's actions. The amount claimed as per the affidavit in support is Kshs 2,950,000/= being Kshs 120,000/= in rent, Kshs 330,000/= in salaries and wages payable to the workers and Kshs 2,500,000/= in business loss per month.
20. On the same date, the landlord filed a motion seeking to recover Kshs 269,000/= in rent, service charge and auctioneers' charges against the tenant. The landlord further seeks leave to use lawful means to recover the amount.
21. The landlord through its director, one Shyam Vyas filed a replying affidavit sworn on 14th October 2023 addressing all the tenant's application.
22. On 5th February 2024, this Tribunal directed the Public Health Officer in charge of the Subcounty where the suit premises are situate to visit the same for purposes of inspection and establishing whether any repairs were required to be undertaken and if so the nature and extent thereof within 30 days of the said order.
23. The parties were also directed to file and exchange rent account statements and documentary evidence of rent payment in respect of the suit premises from 1st September 2022 to the date of the order for purposes of determining whether any rent arrears were owing by the tenant in any event within 14 days of the order. The status quo obtaining at the suit premises was to be maintained by both parties pending inspection and compliance with the inspection order.
24. After this Tribunal gave the above directions, the Landlord's counsel informed the court that the tenant had cleared all the rent arrears and therefore, there was no need of exchanging the rent account statements. The matter was therefore slated for mention on 12th March 2024.
25. On 12th March 2024, both Counsel appeared in court and indicated that they had filed submissions and that there was no need for the inspection earlier ordered in the matter. The landlord's Counsel had by then uploaded a letter on the e-filing portal explaining why the Public Health Inspector's report was not necessary to which the tenant's Counsel concurred. However, a check on the e-filing portal revealed that there were no submissions uploaded by either party.
26. We shall therefore proceed to determine the matter on the basis of the materials on record and the following issues;
 - a. Whether the tenant is entitled to the orders of injunction and for repairs as sought in the Reference/Complaint and the application dated 5th May 2023.
 - b. Whether all the other applications filed by both parties ought to be considered and determined on their merits.



- c. Who is liable to pay costs?
27. As observed in the foregoing analysis, the tenant moved this Tribunal by way of a Reference/ Complaint dated 5th May 2023 under section 12(4) of the Landlord and Tenant (Shops, Hotels and Catering Establishments Act) Cap. 301, Laws of Kenya claiming that the Landlord had refused to effect major structural repairs in the business premises which had caused blocked lavatories. The tenant therefore sought that the landlord be enjoined from interfering with the tenancy and an order directing the landlord to effect the repairs.
28. The tenant simultaneously filed a motion of even date under section 3A of the Civil Procedure Act and Order 40 Rules 1,2,4 and 10 of the Civil Procedure Rules seeking for orders;
- a. THAT the application be certified as urgent, service thereof be dispensed with and the same be heard ex-parte at the first instance.
 - b. THAT the Respondent, either by themselves, their principals, agents, servants and/or anyone else be restrained by way of an injunction from levying distress, proclaiming, evicting and/or interfering with the Applicants quiet possession of the suit premises in whatsoever manner pending the hearing and final determination of the application.
 - c. THAT the Respondent be directed to effect the major structural repairs of the suit premises failure to which the rent payable equivalent to the costs of repairs be withheld by the Tenant.
 - d. THAT an order does issue that the rent due and owing from the Applicant be deposited in court pending the hearing and determination of the suit herein.
 - e. THAT the costs of the Application be provided for.
 - f. THAT such orders that this Honorable Tribunal shall deem just.
29. The application is supported by the affidavit of Gitobu M'mbui and the following grounds;
- I. On or about 1st September 2022, the Applicant entered into a lease agreement with the Respondent for the lease of commercial space suitable for Go-down comprised in Title Number L.R No. 209/10802 for a period of 2 years.
 - II. It was a term of the said lease agreement that the Applicant shall pay the Licensor the license fee of Kenya Shillings One Hundred and Twenty Thousand (Kshs 120,000/-) every month.
 - III. Clause II of the said Lease Agreement provided that "the Licensor shall effect all major structural repairs at his own costs upon such defects being notified in writing by the licensee and in the event that the licensor fails to make such repairs within 30 days upon being notified, the licensee may make above repairs and can recover the same from the licensor as a debt. The amount owed shall accrue at an interest of 14% after lapse of 30 days after delivery of an invoice to the licensor demanding payment.
 - IV. THAT in violation of the said clause and despite the notification by the Applicant, the Respondent failed to repair the major structural defects including the leaking roof, dilapidated toilets and bathrooms.
 - V. Despite the assurance of the Landlord/Respondent that it would repair the floor and other major structural defects as at the date of the commencement of the lease and taking of possession of the premises, the Landlord has refused or declined to do so in flagrant violation of the terms of the lease.



- VI. The Landlord continued with bad faith and demanded full rent from the Applicant despite the existing major structural defects that require repair which defects have greatly impacted on its operations and business.
- VII. Despite compliance with the terms of the aforesaid Lease Agreement, the Landlord has consistently issued threats and intimidation of eviction and further refused to effect repairs of the major defects of the premises.
- VIII. Unless the Tribunal intervenes, the Applicant's operations and business was at risk of coming to a halt as a result of the Landlord's actions.
30. In his supporting affidavit, the Applicant's Director repeats the averments made on the face of the application and attaches the lease agreement as annexure "GM-1" and copies of email correspondence on the disputed repairs as annexure 'GM-2'.
31. Despite the assurance of the Landlord/Respondent that it would repair the floor and other major structural defects as at the date of the commencement of the lease and taking of possession of the premises, the tenant contends that the Landlord refused or declined to do so in flagrant violation of the terms of the lease.
32. The Landlord is accused of having continued in bad faith to demand full rent from the Applicant despite the existing major structural defects that required repair which defects had greatly impacted on the Applicant's operations and business.
33. Interim orders were given ex-parte by this Tribunal on 8th May 2023 pending hearing inter-partes on 6th June 2023.
34. The landlord in response filed a motion dated 19th May 2023 under certificate of urgency in which it sought for orders that the Applicant be ordered to immediately pay Kshs 232,200 rent for the months of April and May 2023 due to the Respondent and to continue depositing the same into the Respondent's account pending the hearing and determination of the suit and in the event the applicant defaults, the honorable Tribunal gives permission to the Respondent/landlord to levy distress for rent.
35. The application is based on the following grounds: -
- a. The Respondent has never had any intentions of evicting the Applicant or interfering with his use of the premises and gave guarantee that it intended to abide by all the orders issued pending hearing and determination of this matter.
 - b. The Respondent had not refused to receive rent from the Applicant who was withholding the same with no justifiable cause.
 - c. The unclarified issue in the order is the rent due as the applicant had not paid the Respondent two months' (April and May) rent of Kshs 232,200 which he was withholding without lawful cause.
 - d. Whilst the Respondent undertook to adhere to the orders granted, it requested for additional orders as to rent to the orders issued on 8th May 2023.
 - e. The rent due/demanded was not an issue raised in the application pending for determination before this court but who was to take responsibility for structural repairs or how the structural repairs were supposed to be done.



- f. The rent was due on 5th April and May 2023, the Applicant had not paid any rent to the Respondent whilst he is still using and profiting from the demised premises of the Respondent and as such, he approached this court with unclean hands.
 - g. According to the landlord, the costs for repairs was roughly Kshs 50,000 and as such, the withholding of Kshs 232,200 rent by the Applicant was not in good faith, it was unjustifiable and unreasonable.
 - h. There was no clause in the lease agreement that allows the tenant to withhold rent.
 - i. The Respondent had urgent financial obligations with various financial institutions and as such required the money to settle the same.
 - j. The demised premises are the only source of income for the Respondent and non-payment of rent by the Applicant was bringing unnecessary hardship to him.
 - k. The Respondent had in good faith tried to ask the Applicant to even deduct part of the rent to go towards repairs and pay him the remainder but the Applicant had ignored his emails or send away persons who were sent by the Respondent to collect the cheque and as such there was a general feeling that there are other reasons for the Applicant's withholding of the rent.
 - l. The Respondent believes that the entire court process is aimed at frustrating, punishing, and blocking him from receiving his rent as the tenant may not be having the money at hand and on several occasions had threatened the Respondent with taking him to this Tribunal and drag the matter for over a year to ensure the bank auctions the property.
 - m. With the aim of frustrating the Respondent, the applicant prayed that the rent due to the Respondent be deposited into court so that he cannot access it yet rent was not an issue for determination before this court while the Applicant was profiting and doing business in the premises of the Respondent without paying a single cent.
 - n. Unless the Tribunal intervened and issue orders as to rent, the Applicant would continue withholding the Respondents rent without justifiable cause and would continue banking and relying on the injunctive orders issued to deny the Respondent rental income meant to meet his financial obligations which in the short run would cause unnecessary loan penalties and interest and in the long run cause realization of the demised premises as the Respondent was using it as security for loans from financial institutions.
36. The application was considered at the ex-parte stage and interim orders directing the tenant to pay outstanding rent were made pending hearing inter-partes on 6th June 2023.
37. On 6th June 2023, the matter came up in court and the tenant was authorized to repair the roof and unblock the toilet on condition that the same be notified to the landlord for approval of the cost thereof and filed in court in case of a dispute. The tenant was directed to clear outstanding rent for the months of April, May and June 2023 by 15th June 2023 failing which the landlord be at liberty to use lawful means to recover the same. The matter was directed to be mentioned on 4th July 2023.
38. The matter was again mentioned on 18th July 2023 when the tenant indicated that he had complied with the order for payment of rent and that the issue of repairs was still outstanding. The matter was therefore directed to be mentioned on 17th August 2023 to confirm repairs.
39. Throughout the instant proceedings, the tenant did not file any expert report of the nature of repairs required to be undertaken in the suit premises neither did he comply with the directions of 6th June



- 2023 which authorized him to undertake the repairs after agreeing on the cost thereof with the landlord. No report was filed in this Tribunal in case of a dispute in the cost of repairs as directed. Instead, the tenant kept on filing new applications in the matter which completely obscured the real issue in controversy between the two parties.
40. On 5th February 2024, this Tribunal directed the Public Health Officer in charge of the Subcounty where the suit premises are situate to visit the same for purposes of inspection and establishing whether any repairs were required to be undertaken and if so, the nature and extent thereof within 30 days of the said order.
41. The parties were also directed to file and exchange rent account statements and documentary evidence of rent payment in respect of the suit premises from 1st September 2022 to the date of the order for purposes of determining whether any rent arrears were owing by the tenant in any event within 14 days of the order. The status quo obtaining at the suit premises was to be maintained by both parties pending inspection and compliance with the inspection order.
42. After this Tribunal gave the above directions, the Landlord's counsel informed the court that the tenant had cleared all the rent arrears and therefore, there was no need for exchanging the rent account statements. The matter was therefore slated for mention on 12th March 2024.
43. On 12th March 2024, both Counsel appeared in court and indicated that they had filed submissions and that there was no need for the inspection earlier ordered in the matter. The landlord's Counsel had by then uploaded a letter on the e-filing portal explaining why the Public Health Inspector's report was not necessary to which the tenant's Counsel concurred. However, a check on the e-filing portal revealed that there were no submissions uploaded by either party.
44. It is therefore clear from the foregoing that both parties have thwarted all efforts by this Tribunal to determine the issue of alleged structural repairs and as matters stand, there is no evidence on the nature of the repairs sought to be undertaken in the suit premises. This Tribunal's directive for inspection by the Public Health Department was thwarted by both parties' insistence that it was not necessary and in absence of such a report, we are unable to make any orders in favor of the tenant to that effect.
45. Sections 108 & 109 of the Evidence Act, Cap. 80, Laws of Kenya provides as follows;
- “
- “ 108. Incidence of burden;
The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
109. Proof of particular fact;
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.”
46. In the case of NM & Another (Suing as representative of the estate of L.N (Deceased) Vs Ndungu Isaac (2020) eKLR the Superior court considered the issue of proof on a balance of probabilities and cited previous decisions on the issue as follows;
- “



“23. The question then is what amounts to proof on a balance of probabilities. Kimaru, J in *William Kabogo Gitau vs. George Thuo & 2 Others* [2010] 1 KLR 526 stated that:

“In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred.”

24. In *Palace Investment Ltd vs. Geoffrey Kariuki Mwenda & Another* (2015) eKLR, the judges of Appeal held that:

“Denning J. in *Miller Vs Minister of Pensions* (1947) 2 ALL ER 372 discussing the burden of proof had this to say;

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; we think it more probable than not; the burden is discharged, but if the probability are equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case in which a tribunal cannot decide one way or the other which evidence to accept, where both parties...are equally (un)convincing, the party bearing the burden of proof will lose, because the requisite standard will not have been attained.”

47. In the instant suit, the tenant has miserably failed to establish his case on a balance of probabilities in line with the foregoing legal analysis and is therefore not entitled to the reliefs sought as he has failed to establish the principles espoused in the case of *Giella Vs Cassman Brown & Co. Limited* (1973) E.A 358 which were discussed by the court of appeal in *Mrao Limited Vs First American Bank of Kenya Limited 2 others* (2003) eKLR where it was held as follows;

“The principles which guide the Court in deciding whether or not to grant an interlocutory injunction are well settled. In *Giella v Cassman Brown* to refer to a case which shifts the evidential burden of proof, rather than as giving rise to a legal burden of proof in the manner he was considering, which was in relation to the pleadings that had been put forward in that case. I would certainly think that it would be in the appellant’s interest to adopt a genuine and arguable case standard, rather than one of a *prima facie* case, the former being, in my opinion, the lesser standard of the two.”

So, what is a “*prima facie* case,” I would say that in civil cases, it is a case in which on the material presented to the 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 latter.”

48. Based on the pleadings on record, we are not convinced that the tenant has put forward sufficient materials upon which we can exercise our judicial discretion to grant the orders sought. He has also failed to demonstrate that he was bound to suffer irreparable loss and damage which cannot be compensated in monetary terms if the orders sought are not granted in his favor. The application and reference which raise the same issues are therefore candidates for dismissal in line with Section 12(4) of Cap. 301, Laws of Kenya.



49. As to whether the other applications filed herein by both the tenant and the landlord ought to be considered on their merits, it is our view that the same were instituted in total abuse of court process as they were filed in quick succession of each other to obscure the real dispute that was instituted by the tenant. What was initially filed by the tenant was an application for injunction orders to stop interference with the suit premises and an order for repair of alleged structural defects which as observed above have not been proved. Several subsequent applications were filed by the tenant and the landlord without any legal foundation and without caring that the initial application and reference was still pending. It is our view that filing a multiplicity of applications in a matter amounts to abuse of court process which has occasioned a delay of almost one year to hear and determine the matter. This kind of legal theatrics which is rampant before this Tribunal ought to be discouraged as it only assists in obstructing the course of justice. All the said applications are therefore candidates for dismissal.
50. In regard to the issue of costs, the same are within this Tribunal's discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We note that both parties failed to comply with directions of this Tribunal which were aimed at resolving the dispute once and for all and proceeded to engage in a flurry of filing one application after another thereby scuttling a merit-based determination of the dispute. We shall therefore order that each party meets own costs of the case.
51. In conclusion, the following final orders commend to us;
- a. The tenant's Reference/Complaint and the application dated 4th May 2023 are dismissed and the interim orders issued pursuant thereto are hereby discharged.
 - b. All the subsequent applications by the tenant and the landlord are dismissed for being an abuse of court process and all interim orders issued pursuant thereto are hereby discharged.
 - c. Each party shall bear own costs of the suit.
- It is so ordered.

DATED, SIGNED & VIRTUALLY DELIVERED THIS 5TH DAY OF APRIL 2024

HON. GAKUHI CHEGE - PANEL CHAIRPERSON

HON. JOYCE A OSODO - PANEL MEMBER

In the presence of:

Okubasu for the landlord

In the absence of the tenant

