



**Odhiambo & another v Kiarie & another (Tribunal Case E744 of 2023)
[2023] KEBPRT 1387 (KLR) (Commercial and Tax) (15 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1387 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
COMMERCIAL AND TAX
TRIBUNAL CASE E744 OF 2023
M MAKORI, MEMBER
NOVEMBER 15, 2023**

BETWEEN

WUDA AKINYI ODHIAMBO 1ST APPLICANT

BENOX OKELLO 2ND APPLICANT

AND

MWAURA KIARIE 1ST RESPONDENT

PHILIP OKINYI 2ND RESPONDENT

RULING

1. The Notice of Motion application for determination by this Honorable Court is the Tenants/ applicants application dated 4th August 2023 and supported by the supporting affidavit of Benox Okello sworn on the 4th of August 2023.
2. The applicants/Tenants seek for orders to restore the electricity power supply in the tenant premises immediately, in default the tenant is to restore the electricity and assistance of a K.P.L.C Engineer and deduct costs from future rent and that the landlord be restrained forthwith from unlawfully increasing rent, harassing, evicting and or disconnecting electricity and/or interfering with the applicants quite occupation and enjoyment of the premises.
3. The same was opposed vide a replying affidavit dated 1st September 2023 and in turn made several averments including failure by the applicants to pay their rental dues.



4. In seeking to resolve the matter it is confirmed that Indeed the jurisdiction of the Business Premises Rent Tribunal is governed by the *Landlord and Tenant Shops Hotels and Catering Establishments* Act Cap 301. The preamble to the Act states that:

“It is an Act of Parliament to make provisions with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto.”

5. The applicants submit that although he has been faithfully paying rent, the landlord/respondents disconnected the electricity power supply and threatening them causing untold hardship to the applicants and their clientele.
6. On the other hand, the landlord submits that the electricity of the buildings was faulty and the respondents were in the process of engaging an electrician to fix it but due to lack of payment of rent by the applicants' the respondents could not meet the electricians' costs.
7. According to the landlord, they continue to suffer extreme prejudice as the applicants continue to neglect their obligations to pay the accruing rent arrears and therefore the tenant has come to court with unclean hands.
8. Having analyzed the pleadings and submissions of both parties, it is my considered view that the willingness and ability to pay rent is not in question. The Tribunal further notes that the agreement entered into by the parties vested an obligation upon the tenant to pay rent of Kenya Shillings seven thousand (Kshs 7,000). The same is conceded in the pleadings by both parties.
9. Whereas the Respondents have not shown cause why the tenant should not be granted orders protecting him from eviction and disconnection of electricity, I note that they have made their case on the rent amount that they are entitled to which is the contract amount of Kenya Shillings seven thousand (Kshs 7,000). This is evidenced by their attached documents and admission by the Applicants in their pleadings.
10. Although the landlord/Respondents deny that they disconnected the electricity, it is my finding that their conduct betrays them. After their actions were challenged by the applicants, the landlord admitted there was indeed a cut but claimed the same was due to a faultiness in the disconnection although no proof has been shown thereto.
11. Based on this we find that the tenant has satisfied the principles for granting an order of injunction.
12. From the above it is not lost to this Tribunal that the tenant lost business due to the Respondents actions of disconnecting electricity from the subject premises. It was on this ground that the applicant sort protection of this Tribunal and was granted orders to that effect.
13. In establishing that there was indeed a loss incurred by the applicants I seek the wisdom of John M. Mativo.J in the case of *Hyrdo Water Well (K) Limited v Nelson Mukara Sechere & 2 others* [2021] eKLR) The most important consideration in any lost profits case was how much and what type of evidence a party needed to prove the alleged lost profits. Typically, lost profits damages referred to the loss of net profits rather than gross profits or revenue. Lost profits were damages for the loss of net income to a business and broadly speaking they reflected income from lost business activity, less expenses that would have been attributable to that activity. After calculating net profits, the plaintiff had to show:



- a. that the conduct upon which the claim was based caused the lost profit damages (proximate cause);
 - b. that the parties contemplated the possibility of lost profit damages or that the lost profit damages were a foreseeable consequence of the conduct (foreseeability); and
 - c. that the lost profits were capable of proof with a reasonable degree of certainty (reasonable certainty).
14. In considering the three fundamentals of such a claim, I find that the applicants have proved the three elements in establishing that they indeed lost profits from the business due to a direct disconnection of the electricity.
15. In exercising judicial discretion therefore, I find that despite the Applicants being in default of rent payment and having not fully met their contractual obligations they have indeed lost business from the electricity disconnection.
16. By dint of the above paragraph the application dated 4th August 2023 partially succeeds.
17. In the upshot, the Tribunal orders are as follows:
 - a. That the Landlord and his caretaker are prohibited from unlawfully harassing, evicting, increasing rent, disconnecting electricity power, attaching, or tampering with the Applicant's quiet occupation and lawful enjoyment of suit premises at Mathare A1.
 - b. That the loss of Kshs. 32,800 is proved but the same shall be offset by rent arrears of Kshs. 20,000 owed to the landlord.
 - c. The tenant is to commence payment of rent at the contract amount of Kshs. 7,000/= to the landlord.
 - d. Each party to bear its own cost.

HON. MIKE MAKORI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON MIKE MAKORI THIS 15TH NOVEMBER, 2023 IN THE ABSENCE OF THE PARTIES.

HON. MIKE MAKORI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

