



**Chepkorir v Langat (Tribunal Case E053 of 2021)
[2023] KEBPRT 28 (KLR) (Civ) (17 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 28 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E053 OF 2021
A MUMA, VICE CHAIR
JANUARY 17, 2023**

BETWEEN

ANNETH CHEPKORIR TENANT

AND

PHILIP KIPNGENO ARAP LANGAT LANDLORD

RULING

A. Parties and Their Representative

1. The applicant Anneth Chepkorir is the tenant and rented space on premises located at Kericho/ Chemoiben/613 within Litein Township. (herein after referred as the 'tenant')
2. The Firm of M/S Bii V.K & Co Advocates represent the Tenant in this matter. Biivincent3@gmail.com
3. The Respondent, Philip Kipngeno Arap Langat, is the proprietor and the Landlord of premises located at Kericho/ Chemoiben/613 (herein after referred as the 'Landlord')
4. The Firm of Ng'etich, Chiira & Associates Advocates represent the Respondents in this matter. info@ngetichchiiraadvocates.com

B. The Dispute Background.

5. The Tenant and the Landlord entered into a lease agreement dated 21st April 2021 for the demised premises for a period April 1, 2021 to 31st December 2021 for a monthly rent of Kshs.7,000 per month.
6. On November 27, 2021, the Landlord issued a Notice of expiry of Lease and Notice to vacate the premises which prompted the tenant to rush to the Tribunal seeking orders inter alia an injunction restricting the Landlord from harassing the tenant and the cost of application which orders were granted by the Tribunal December 17, 2021 and matter scheduled for interpartes hearing.



7. On several occasion, the January 13, 2022, February 9, 2022 and March 8, 2022, there was no appearance by the Tenant which prompted the Tribunal to issue orders on March 8, 2022 directing that the Tenant's reference and application dated 2nd December 2021 is dismissed with costs and the Landlord at liberty to distress for rent and obtain vacant possession of the premises.
8. The Tenant filed an application dated May 11, 2022 seeking that application dated December 2, 2022 to be reinstated and heard on merits. The parties were directed to file their submissions in respect to the issue raised, which directives the parties have complied with.

C. Jurisdiction

9. The Jurisdiction of this Tribunal is not in dispute.

D. The Tenant's Case

10. The Tenant contends that the application dated December 2, 2021 has merits and high chance of success. She further avers that she was not aware of the mention dates of the matter hence her non-attendance was not deliberate.
11. The Tenant further avers that she stands to lose her premises where she has been running her business should the application be dismissed without being accorded an opportunity to be heard as the landlord has commenced eviction proceedings.

E. The Landlord's Case

12. The Landlord avers that the tenant is being untruth by claiming that she was not aware of the proceedings before the Tribunal as she was on several occasions served with a mention notice as per the evidence attached and the Affidavit of Service.
13. The Landlord further avers that the Tenant is leveraging on the court process to continue occupying the premises yet the lease period had lapsed. As such, the application dated May 11, 2022 has been brought without merit and should be struck out.

F. Issues for Determination

14. I have carefully analyzed all the Pleadings before this honorable Tribunal, all Submissions by parties herein and relevant evidence adduced before this Tribunal. The following issue renders itself for determination;
 - a. Whether the Tenant's application dated May 11, 2022 should be allowed.

G. Analysis of Law and Determination.

15. There being no contestation as to the Jurisdiction of this court, I shall then proceed to the merit of the submissions before me.

Whether the Tenant's application dated May 11, 2022 should be allowed.

16. For an application for reinstatement to succeed, the applicant must demonstrate to the Tribunal plausible reasons wherein the application for reinstatement is premised.
17. In the instant case, the Tenant pleads ignorance stating that is the reason why she did not attend court on the designated date. However, on the contrary the Landlord has annexed evidence wherein the Tenant was duly served ahead of the hearing.



18. The mode of service as evidenced by the Landlord was via whatsapp which is an acceptable mode of service as under order 5 rule 22c of the Civil Procedure Rules, 2020.
19. In the case of Ngugi v Thogo (Civil Application 372 of 2018) [2021] KECA 88 (KLR) (22 October 2021), the court noted the following in determining an application of reinstatement “an application for reinstatement of a court process, there is need to balance the requirement as to whether reasonable grounds have been proffered for reinstatement and the prejudice to be suffered by the opposite party if such an order for reinstatement were to issue bearing in mind at the same time that dismissal is a draconian order that drives parties away from the seat of justice and should therefore be employed sparingly”.
20. Flowing from the above, the Tenant has not demonstrated any harm that she stands to suffer and consequently has not advanced reasonable grounds for non-attendance. If anything, the lease period for the demised premises lapsed on December 31, 2021 which points to illegal continued occupation of the premises as the lease agreement expired by effluxion of time. Further, the Tribunal notes that there must be an end to litigation and thus is of the opinion that trivial applications that are meant to prolong matters should be disallowed.

H. Orders

21. The upshot of the ruling above is that;
 1. The tenant’s application dated 11th May is disallowed, the reference dated December 2, 2021 is not reinstated;
 2. The Orders of the Tribunal dated March 8, 2022 are upheld;
 3. An order for stay of execution for 30 days is hereby granted; and
 4. Each party shall bear its own cost.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 17TH DAY OF JANUARY 2023 IN THE PRESENCE OF BII FOR THE TENANT AND IN THE ABSENCE OF THE LANDLORD.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

