



**Noorani v Mirakdhan Limited (Tribunal Case 070 of 2023)
[2024] KEBPRT 449 (KLR) (3 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 449 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 070 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
APRIL 3, 2024**

BETWEEN

OMAR NOORANI TENANT

AND

MIRAKDHAN LIMITED LANDLORD

RULING

A. The Dispute Background

1. The Tenant/Applicant moved this Tribunal vide a Notice of Motion under a Certificate of Urgency dated 16th November, 2023 in which he seeks for the following orders; -
 - i. That the application be certified urgent.
 - ii. That pending the hearing and determination of the application inter-partes, the tribunal be pleased to discharge, review and or set aside its ruling and/or orders issued on 3rd November, 2023 and all consequential orders.
 - iii. That upon review of the orders, the tribunal does direct that the reference filed by the tenant dated 27th March, 2023 be set down for hearing on merit.
 - iv. That costs of the application be provided for.
2. The application is supported by an affidavit of even date in which the tenant deposes as follows; -
 - i. That vide a Notice of Alteration of Tenancy dated 28th February, 2023, the landlord informed the tenant of their intention to alter the rent for the suit premises from KES. 31,907 to KES. 52,226 which notice was to take effect on 1st May 2023. A copy of the Notice is annexed as "Exhibit-1".



- ii. That vide a letter dated 17th March, 2023, the tenant opposed the said notice and instead urged that the rent be increased to KES. 40,000 instead of KES. 52,226. A copy of the letter is annexed as “Exhibit-2”.
 - iii. That on 27th March, 2023, the tenant moved the court for the injunctive reliefs which were granted on 30th March, 2023 awaiting determination of the said application.
 - iv. That together with the application, the tenant filed a reference under Section 6 of Cap 301 wherein the tenant filed Form B as prescribed in the said Act and a subsequent application dated 1st August, 2023. A copy of the Reference is annexed as “Exhibit-3”.
 - v. That all the above pleadings were uploaded into the judiciary CTS system, after which on the said date, the tribunal Registry generated an invoice for KES. 740 which was paid promptly. An extract of the CTS system is annexed as “exhibit 4”. A receipt of payment of KES. 740 is annexed as “exhibit-5”.
 - vi. That on 30th March, 2023, the registry generated yet another invoice for KES. 570 as “Further Court Fees” and later on 24th April, 2023, the registry generated yet another invoice for KES. 12,760 being “further court fees” all of which the tenant paid promptly.
 - vii. On 3rd November, 2023, the tribunal delivered a ruling which has been annexed as “exhibit-6”.
 - viii. That by the tribunal holding that the tenant never filed a reference under Section 6 of the Act, there exists an error on the face of the record.
 - ix. That the tribunal failed to take notice of the reference uploaded on 27th March, 2023 although wrongfully marked as Form A.
 - x. That even if the date of the receipt of payment differs with that of the reference, the tenant was not in control of the generation of invoices by the registry.
 - xi. That the said reference was within statutory timelines, noting that the Notice was to take effect on 1st May, 2023.
 - xii. That the matter in issue is an assessment of rent which unless the tribunal intervenes, the landlord shall hike the rent which as, already mentioned in the application dated 27th March, 2023 is way too exorbitant.
3. The landlord/respondent opposes the application vide grounds of opposition dated 13th December, 2023 in which he states as follows; -
- i. That the application herein seeks to revisit and re-argue the same issues that have already been dealt with by this tribunal prior to rendering its ruling.
 - ii. That the application herein lacks merit as the tenant cannot file a reference opposing a notice in a complaint.
 - iii. That the application herein lacks merit as the tenant seeks to have the tribunal equate a complaint to a reference which is contra-statute to wit, Cap 301.
 - iv. That the application herein is defective as it has been filed by an advocate who is not on record for the tenant in this matter.



4. At a court hearing held on 7th December, 2023, the tribunal ordered parties to file their written submissions. The tenant filed his written submissions dated 23rd February, 2024. We shall consider the written submissions filed as we deal with the issues for determination.

B. Issues for determination

5. The following are the issues for determination; -
- a. Whether the tenant is entitled to the orders sought in the application dated 16th November, 2023.
 - b. Who is liable to pay costs of the application?

Issue (a) Whether the tenant is entitled to the orders sought in the application dated 16th November, 2023.

6. The tenant/applicant has come to this tribunal seeking review and/or setting aside of the orders made in the ruling of 3rd November, 2023 and that the reference dated 27th March, 2023 be set for hearing on merit.
7. The tenant in his supporting affidavit dated 16th November, 2023 deposes that they filed a reference under Section 6 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) dated 27th March, 2023 to oppose the landlord's Notice to alter terms of tenancy dated 28th February, 2023 which was due to take effect on 1st May, 2023.
8. Upon perusal of the court documents, we note that indeed the tenant filed a reference under Section 6 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301 which was annexed to the application dated 27th March, 2023 and the same was duly paid for.
9. Section 6 of the Act states;
- “A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal”
10. We note that the said reference by the tenant had initially been dismissed by this tribunal based on an error on the court record which the tenant has pointed out in his submissions.
11. Based on the above analysis, the tribunal finds and holds that the reference under Section 6 of the Act filed by the tenant is valid and therefore the tribunal shall allow the application dated 16th November, 2023 by setting aside the orders in the ruling dated 3rd November, 2023.

Issue (b) Who is liable to pay costs of the application?

12. Under section 12(1)(k) of Cap. 301, Laws of Kenya, costs of any suit before this tribunal are in its discretion but always follow the event unless for good reasons otherwise ordered. We shall order that costs of the application abide the outcome of the reference as the error was not occasioned by the parties.



C. Orders

13. In conclusion, the following orders commend to us;

- a. The tenant's application dated 16th November, 2023 is hereby allowed and the matter shall proceed to hearing of the main reference.
- b. Parties to file and exchange rent assessment reports within 30 days hereof for consideration at the hearing.
- c. Parties shall comply with Order 11 of the Civil Procedure Rules within 30 days hereof.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD APRIL 2024

HON. JOYCE AKINYI OSODO - (PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE - (MEMBER)

In the presence of:

Hassan for Landlord

No appearance for Tenant

