



**Muroki v Muchiri (Tribunal Case E079 of 2023)
[2024] KEBPRT 1051 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1051 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E079 OF 2023
CN MUGAMBI, CHAIR
JULY 24, 2024**

BETWEEN

MARGARET NJERI MUROKI TENANT

AND

SAMUEL MUCHIRI LANDLORD

RULING

Introduction

1. The Tenant's Application dated 11.03.2024 seeks an order that the Tenant's suit be reinstated for hearing and also seeks an order of injunction restraining the Landlord from evicting the Tenant from the suit premises.

The Tenant's deposition

2. The Tenant's affidavit in support of the Application may be summarized as follows hereunder;-
 - a. That when this matter came up for hearing on 5.08.2024, Counsel for the Tenant was unable to join via the appointed link.
 - b. That the Tenant's Counsel was attending to Molo CMCRC Case No. 3816 of 202?
 - c. That the mistakes of Counsel ought not to be visited on the Tenant.
 - d. That it is in the interest of justice that the Application be allowed as the Landlord will not suffer any prejudice.

The Landlord's deposition

3. The Replying affidavit sworn by Counsel for the Landlord on behalf of his client may be summarized as follows;-



- a. That he has the authority of the Landlord to swear the replying affidavit.
- b. That on 22.01.2020, Counsel for the Tenant failed to attend court and when the matter was again fixed for hearing on 5.03.2024, the Tenant's Counsel was again absent.
- c. That the reasons advanced for the absence of Counsel are frivolous.
- d. That the Tenant has been abusing the judicial system by unnecessary delays while they already had injunctive relief against the Tenant.
- e. That the pendency of the suit has denied the Landlord rental income and it is therefore in the interest of justice that the Application be dismissed.

Analysis and determination

4. The only issue that arises for determination in this Application is whether the Tenant is entitled to the orders sought in his Application.
5. The Tenant's Application dated 8.05.2023 was on 5.03.2024 dismissed for want of prosecution. A perusal of the record will show that on 13.12.2023, the matter was fixed for hearing on 22.01.2024 and on the said date, the Tenant and Counsel failed to attend court. The matter was then fixed for hearing on 05.03.2024 and the Counsel for the Tenant was ordered to serve the Landlord's Counsel. The Counsel for the Tenant was served but failed to attend court on 5.03.2024 as a consequence of which, the Application was dismissed.
6. The reasons given by the Tenant for the absence of her Counsel on the material day are that the said Counsel was attending to a Succession and a Criminal matter both at the Molo and Nakuru Law Courts. The case numbers have been provided but no Cause list has been attached to the affidavit to authenticate the allegation that the said matters came up for hearing on the said date.
7. I have however carefully perused the record and I do note that save for the two days, 22.01.2024 and 05.03.2024, Counsel for the Tenant has dutifully attended court and indeed this matter had directions that the same proceeds orally.
8. I have also noted that the orders for dismissal were issued on 05.03.2024 and the Application to reinstate this matter was filed on 11.03.2024. That in all fairness cannot be termed as an inordinate delay and only serves to fortify the Tenant's desire to have his day in court.
9. Consequently, I will allow the Tenant's Application dated 11.03.2023 in terms of prayers (2) and (3) thereof and further order that the matter proceeds for hearing in terms of the directions issued on 4.10.2023.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH DAY OF JULY, 2024.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Ms. Kuya holding brief for Mr. Muriithi for the Tenant/Applicant and Ms. Waithaka for the Landlord/Respondent

