



**Njagi v Kevma Real Estate (Tribunal Case E728 of 2024)
[2024] KEBPRT 1231 (KLR) (27 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1231 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E728 OF 2024
CN MUGAMBI, CHAIR
AUGUST 27, 2024**

BETWEEN

CHARLES MAGANE NJAGI APPLICANT

AND

KEVMA REAL ESTATE RESPONDENT

RULING

Introduction

1. The Tenant's Application dated 5.7.2024 seeks orders of injunction restraining the Landlord from in any manner interfering with the Applicants tenancy in the premises known as Camp Entumoto in Kasarani. The Applicant has also sought for police assistance in the enforcement of the orders sought through the OCS, Kasarani police station and costs.

The Tenant's depositions

2. The Affidavit of the Tenant in support of this Application sworn on 5.7.2024 may be summarized as follows;-
 - a. That the Applicant is a tenant in the suit premises paying a monthly rent of Kshs. 7,000/=.
 - b. That on 1.7.2024, the Respondent made a verbal demand to the Tenant requiring the Tenant to vacate the premises.
 - c. That while the Tenant has no problem continuing with the payment of rent, the Respondent has started interfering with the quiet use and occupation of the premises by unjustifiably harassing the Tenant.
 - d. That the actions of the Respondent are meant to ensure that the Tenant does not file a reference to the Tribunal under Section 6(1) of Cap 301.



The Landlord's response

3. The Landlord's affidavit has been sworn by Kevma Real Estate may be summarized as follows;-
 - a. That the Applicant is a Tenant of the rental space A-2 at Camp Entumoto in Kasarani by virtue of the tenancy agreement dated 29.7.2022 and the Tenant has been paying rent irregularly and only upon demand.
 - b. That the Applicant has rent arrears amounting to Kshs. 16,000/= as at 5.7.2024.
 - c. That on 4.7.2024, the Respondent informed the Tenant of the rent arrears and advised the Tenant to vacate the premises on account of the arrears.
 - d. That the Respondent further confiscated the Tenant's meat grill on 4.7.2024 pending the payment of the arrears.
 - e. That on 10.7.2024, the Respondent was served with this court's order requiring him to return the grill and to desist from disturbing the Tenant and even after complying with the said order, the Tenant continued to be in arrears of rent.
 - f. That the Tenant's Application ought to be dismissed and the Tenant ordered to vacate the premises.

Analysis and determination

4. The only issue that arises for determination is whether the Tenant is entitled to the orders sought in his Application.
5. The Tenant's Complaint is that the Landlord/Respondent is interfering with the Tenant's quiet enjoyment and peaceful possession of the suit premises. The Tenant has deposed in his affidavit that the Respondent issued a verbal notice requiring the Tenant to vacate the premises. The Respondent in its replying affidavit has admitted that it issued a verbal notice requiring the Tenant to vacate the suit premises on account of non-payment of rent and went on to confiscate the Tenant's meat grill which it only returned to the Tenant after the Tenant obtained court orders.
6. The Respondent's verbal notice to terminate the tenancy between the parties clearly offends the provisions of Section 4(1) and 4(2) of Cap 301 of the Laws of Kenya and is obviously illegal and of no consequence.
7. Whereas the Respondent is entitled to levy distress for rent for any rent arrears, the Respondent's confiscation of the Tenant's meat grill did not appear to follow any recognized procedure laid down for the levy of distress for rent. It was illegal.
8. The Tenant has not denied that he is in rent arrears but I also do note that the Respondent has not proved the indebtedness of the Tenant and more specifically because the Respondent is required under Section 3(3) of Cap 301 to keep a rent book in the prescribed form. It would have been expected in the circumstances that the Respondent would have exhibited a copy of the rent records which unfortunately it has not.
9. In the circumstances, I do find merits in the Tenant's Application and proceed to allow the same as prayed and more particularly issue orders in terms of prayers 3, 4 and 5 thereof.



10. The Tenant's Complaint dated 5.7.2024 raises the same issues as the Tenant's Application of even date and the issues having been inclusively determined in this Ruling, I proceed to allow the Complaint in the terms set out under paragraph 9 above.
11. The Tenant will have the costs of the Application and the Complaint. This file is ordered closed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF AUGUST, 2024.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Ms. Kimathi for the Respondent and in the absence of the Tenant/Applicant

