



**Speedman Commercial Agencies v Nahoco Housing Co-operative Society Ltd & another
(Tribunal Case E702 of 2023) [2023] KEBPRT 1155 (KLR) (5 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1155 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E702 OF 2023
CN MUGAMBI, CHAIR
DECEMBER 5, 2023**

BETWEEN

SPEEDMAN COMMERCIAL AGENCIES APPLICANT

AND

NAHOCO HOUSING CO-OPERATIVE SOCIETY LTD 1ST RESPONDENT

GIMCO LIMITED 2ND RESPONDENT

RULING

Introduction

1. The tenant's application dated 19.7.2023 has sought orders that the Respondents be restrained from illegally closing and locking out the plaintiff (sic), its servants and staff from 3rd floor, Nacico chambers L.R. No. 209/7264 Moi Avenue, Nairobi, hereinafter the suit premises. The Applicant has also sought for costs of the application.

The Tenant's depositions

2. The tenant's affidavit in support of its application sworn by Philip Jasper Wishaminy on 19.7.2023 may be summarized as follows;
 - a. That by a letter of offer for a lease dated 25.4.2023, the tenant was offered a lease for a period of six years, w.e.f. 1.6.2003.
 - b. That the last letter of offer from the Respondents to the tenants ran from 1.6.2015 and expired on 31.5.2021 and therefore the tenant has since then been occupying the premises under an oral tenancy and is therefore a protected tenant.
 - c. That during the covid pandemic, the tenant paid rent amounting to Kshs. 640,000/=.



- d. That on 30.1.2023, the tenant received a rent demand from the landlord demanding Kshs. 866,891/07.
- e. That the said demand includes VAT charges, which the tenant contends are illegal as it is a protected tenant.
- f. That the Respondents have since March 2023 closed the tenants premises and have refused to re-open the same on the ground that the tenant is in rent arrears.
- g. That the actions of the Respondents are illegal.

The Landlords/Respondents depositions

3. The Respondents replying affidavit sworn by Mr. Simon Warui on 9.8.2023 may be summarized as follows;
 - a. That the Respondents deny that they locked the Applicants premises in March 2023 or at all.
 - b. That it is not true that the Applicant has paid their rent dutifully and indeed the tenant has not been issued with a lease document as it has perpetually defaulted in the payment of rent.
 - c. That there is nothing illegal about service charges and VAT and the tenant has over the years paid VAT and service charge and it is therefore estopped from disputing the said levies.
 - d. That if indeed the premises were closed down in March 2023, the tenant would have moved the Tribunal at that time and the filing of the application by the tenant in July 2023 is an abuse of the court process.
 - e. That the Applicant's application is silent on how much it owes the landlord in rent and how it proposes to pay the same.
 - f. That the tenant has further not provided any alternative figure of the rent owing though it disputes the landlord's figure of Kshs. 866,891/07.
 - g. That the only rent paid for the year 2023 is Kshs. 100,000/=. The Applicant has failed to pay the sum of Kshs. 999,494.27/= in respect of rent, service charge and VAT.
 - h. That in the circumstances, the Applicants motion lacks merit and ought to be dismissed.

The Tenant's further affidavit

4. The tenant has reiterated in his further affidavit that the suit premises were locked by the landlord's caretaker in March 2023 and only re-opened on 27.7.2023 when the Tribunal issued orders to that effect.
5. The tenant has further deponed in its further affidavit that it does not owe the Respondent rent arrears in the sum of Kshs. 866,891.07/= as demanded in the 2nd Respondent's letter dated 30.1.2023.

Analysis and determination

6. The only issue that arises for determination is whether the tenant is entitled to the orders sought in its application.
7. The complaint and the application by the tenant have been brought on the main ground that the Respondents closed down the suit premises sometimes in March 2023. No exact date for the closure has been provided. The landlords/Respondents have denied closing the suit premises in March 2023



or at all. I am inclined to agree with the Respondents that if indeed the premises were closed down in March 2023, then the tenant ought to have moved the Tribunal sooner. As it were, the tenant herein came to court under Certificate of urgency in July 2023 to have the premises closed down in March 2023 re-opened!! It is more probable than not that the tenant came to the Tribunal for purposes other than the alleged closure of his business premises.

8. The landlord has deponed in its replying affidavit that the tenant owes it rent arrears, VAT and service charges amounting to Kshs. 866,891.07/= (as at January 30th 2023). The tenant has denied this amount as demanded and has stated that it cannot be charged VAT and service charge as it is a protected tenant. I do not think the position of the tenant is tenable as clearly there is nothing illegal about charging VAT and service charge. VAT is paid as a matter of statute and service charge under Cap 301 simply means a charge for any services rendered. It is Not true that a protected tenant should not be charged VAT and service charge.
9. In respect to service charge, the Act Cap 301, defines “service” as follows:-

“Service” in respect of any tenancy means the uses of water, light or power conservatory, sewerage facilities, sweeper, watchman, telephone or other amenity or facility available to the tenant, save and except the supplying of meals and right of access to any place or accommodation accorded to the tenant by reason of his occupation of the premises comprised in the tenancy.”
10. I do not understand the tenant in this case to be saying that he does not enjoy any services within the building. In any event, the landlord has deponed and which deposition has not been denied by the tenant, that the tenant has been paying VAT and service charge in the past and is therefore estopped from denying the same at this point.
11. Although the tenant denies owing the landlord Kshs. 866,891.07/=-, the customer balance detail printed in exhibit SW4 on the landlords affidavit show that indeed the tenant had a balance of Kshs. 999,494.27/= as per the last invoice dated 7.1.2023. The tenant has not challenged any one entry in the statement of accounts annexed to the landlords affidavit even though the tenant had this opportunity when it filed its further affidavit. On a balance of probabilities, I do therefore find that the tenant is indeed in rent arrears.
12. The Tribunal has already expressed its doubts on the veracity of the tenant’s assertion that its premises had been closed down by the landlord/Respondents. I have also found that the tenant is in rent arrears. A tenant who fails to pay rent is said to be in fundamental breach of one of the key obligations under a tenancy agreement and is one not deserving of the court’s discretion in granting injunctive relief.
13. What then is the order to issue?
14. In view of the foregoing, I am not convinced that the application by the tenant has merit and the same is hereby dismissed with costs to the landlord.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF DECEMBER 2023.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

5.12.2023

Delivered in the absence of the parties.

