



**Njeru v Mbocha (Tribunal Case E345 of 2024)
[2024] KEBPRT 827 (KLR) (21 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 827 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E345 OF 2024
CN MUGAMBI, CHAIR
MAY 21, 2024**

BETWEEN

EPHREM NJERU APPLICANT

AND

PAULINE WAMBUI MBOCHA RESPONDENT

RULING

Introduction

1. The Tenant's notice of motion dated 13.3.2024 seeks an order that the Landlord re-opens the suit premises and upon reinstating the Tenant, the Landlord be restrained from in any manner interfering with the Tenant's tenancy "pending the hearing of the Application inter partes." I believe the Tenant who represents himself must have intended that this prayer be granted pending the hearing of the Reference. The Tenant has also sought police assistance in ensuring compliance with the orders together with the costs of the Application.

The Tenant's depositions

2. The Tenant's affidavit in support of his Application may be summarized as follows:-
 - a. That the Tenant has been paying the Respondent Kshs. 25,000/= for the suit premises wherein he operates a butchery.
 - b. That on 7.3.2024, the Respondent unlawfully locked the suit premises and immediately the Tenant paid the rent of March, 2024.
 - c. That the Tenant does not have any rent arrears and no notice or lawful order was served upon the Tenant prior to the illegal closure of his business premises.



The Respondent's depositions

3. The Respondent's replying affidavit may be summarized as follows:-

- a. That the Tenant has been occupying shop No. 1 and 4 paying Kshs. 25,000/= per month for each of the shops.
- b. That the locking of the Tenant's premises was necessitated by the Tenant's fundamental breach of the terms of his tenancy, the Tenant has been a habitual rent defaulter.
- c. That the payment of Kshs. 25,000/= by the Tenant on 9.3.2024 covered the arrears of rent for the month of February, 2024 and therefore the rent for the month of March, 2024 remains unpaid and for which Counsel for the Respondent has issued a demand to the Tenant.
- d. That the Tenant requested and was allowed to vacate shop No. 1 sometimes in the month of January, 2024.
- e. That the Tenant requested that the deposit for shop No. 1 be used to settle the February and March 2024 rent for shop No. 4 and this was the beginning of the friction between the parties.
- f. That the Respondent utilized the rent deposit for shop No. 1 to renovate and repair the said shop since the Applicant had partitioned the shop and modified the same to suit a butchery business.

Analysis and determination

4. The only issue that arises for determination is whether the Tenant is entitled to the orders sought in his Application and what orders ought to be made to dispose of the Complaint by the tenant.
5. The Landlord has admitted that she locked the suit premises but attributes this to the Tenant's fundamental breach of the terms of the tenancy agreement. I have held the view that the locking of a business premises by a Landlord without a lawful court order amounts to an illegal attempt by the Landlord to terminate a controlled tenancy contrary to the provisions of Section 4(2) of [Cap 301](#). In the instant case, the Respondent had no lawful court order authorizing her to lock the suit premises and it does not appear as if she was levying any distress for rent. Her actions were clearly illegal and the Tenant's prayer that the suit premises be opened is merited and I grant the same. I also note that on 2.4.2024, when this Application came up for hearing, Mr. Polo, Counsel for the Landlord informed the court that his client was not opposed to the re-opening of the premises.
6. The Landlord has stated that the Tenant gave up shop No.1 on or about January, 2024 and only returned shop No. 4. The Landlord has further stated that the rent paid on 9.3.2024 covered the rent for the month of February, 2024 and therefore the Tenant is in rent arrears amounting to Kshs. 25,000/= for the month of March, 2024.
7. The Landlord in support of her claim that the Tenant owes rent in the sum of Kshs. 25,000/= for the month of March, 2024 has annexed what she calls a copy of records and ledger for rent payments for the year 2023 and 2024. She has also annexed a demand letter from her Advocates demanding the said amount. The records and ledger referred to by the Landlord are not legible and they do not therefore form any coherent statement of accounts.
8. In view of the illegible records and the contention by the Tenant that he paid the rent for the month March, 2024 immediately his business premises was locked by the Respondent, I am not able to find at this stage that the Tenant is in any rent arrears.



9. The Tenant has not raised any Complaint as regards the deposit that he had paid for shop No. 1 and the refund of the same or the Application of the same to cover the rent for the shop he currently occupies cannot therefore be the subject of these proceedings. The Tenant is at liberty to pursue the said refund only adhering to the terms under which the deposit was refundable under the lease/agreement between the parties.
10. Consequently, I do find merit in the Tenant's Application and allow the same as prayed.
11. The Tenant's Complaint has been dealt with by the findings in this Ruling and the same is allowed in similar terms.
12. Each party will bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 21ST DAY OF MAY, 2024

HON. CYPRIAN MUGAMBI

CHAIPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Muhuni for the Landlord and Mr. Ephem Njeru- the Tenant in present in person

