



**Onyango t/a Jesus is Lord Hotel v Juma (Tribunal Case
E051 of 2024) [2024] KEBPRT 1070 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1070 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E051 OF 2024
CN MUGAMBI, CHAIR
JULY 24, 2024**

BETWEEN

WILFRIDA ANYANGO ONYANGO T/A JESUS IS LORD HOTEL . APPLICANT

AND

TOM MAKETE JUMA RESPONDENT

RULING

1. The Tenant's Application dated 27.03.2024 seeks an order that the demand by the Landlord for the payment of rent arrears amounting to Kshs. 75,000/= be declared null and void in the absence of a rent book and rent receipts in proof of the same. The Tenant has also sought for an order that pending the hearing and determination of the suit, the Landlord be restrained from in any manner whatsoever and howsoever interfering with the Tenant's enjoyment of the suit premises. The Tenant has also sought the assistance of the OCS, Kitale police station in ensuring compliance with the orders sought.

The Tenant's depositions

2. The Tenant's affidavit in support of her Application may be summarized as follows hereunder;-
 - a. That the Landlord has initiated the recovery of rent arrears amounting to Kshs. 75,000/= and that on or about February, 2024, the Landlord broke into the suit premises, removed the iron sheets and destroyed food products for sale to customers estimated to costs Kshs. 50,000/= and further, the Tenant lost cash in the sum of Kshs. 20,000/= in the process. The Applicant reported the Landlord to the police at Kitale police station.
 - b. That the rent demand for Kshs. 75,000/= cannot be proved by the production of a rent book and rent receipts.



The Landlord's depositions

3. The Replying affidavit sworn by the Landlord/Respondent may be summarized as follows;-
 - a. That the Tenant has admitted that she is in rent arrears.
 - b. That the Tenant is in rent arrears amounting to Kshs. 216,540/=.
 - c. That the Tenant by alleging that the premises is on land belonging to the prisons department has ill motive of refusing to pay rent.
 - d. That the Tenant has always used hired goons to prevent the Landlord from accessing the premises for the purposes of inspection.
 - e. That the Tenant has resisted the Landlord's efforts to construct a permanent structure on the suit premises.

The Tenant's Further Affidavit

4. The Tenant's further affidavit may be summarized as follows;-
 - a. That the Landlord has misled the court by stating that the Tenant has admitted to being in rent arrears.
 - b. That the Landlord is not clear on the amount of rent demanded as the figures vary from Kshs. 65,000/= to Kshs. 216,540/=.
 - c. That the Landlord does not pay any tax for the temporary premises rented by the Tenant.
 - d. That the Tenant has occupied the suit premises for over twelve (12) years and he has been paying rent to date.
 - e. That whereas the Landlord demanded rent of Kshs. 75,000/= from the Tenant, the only rent owed was Kshs. 17,000/= out of which the Tenant has already paid Kshs. 10,000/= leaving a balance of Kshs. 9,000/=.
 - f. That contrary to what the Landlord alleges, it is actually the Landlord who on 13.04.2024 and 14.04.2024, descended on the suit premises with hired goons and damaged the suit premises.

Analysis and determination

5. The only issue that arises for determination is whether the Tenant is entitled to the orders sought in her Application.
6. The Tenant has requested the Tribunal to find the rent demand of Kshs. 75,000/= to be a nullity on the basis that the same cannot be proven by the production of a rent book and rent receipts.

The Landlord has countered this allegation by stating that the Tenant owes him rent in the sum of Kshs. 216,540/= based on a calculation of the total rent payable less what the Tenant has paid through her Mpesa and as shown in the Mpesa statements. But it is not clear whether all the rent paid by the Tenant over the years is actually captured in the Mpesa statements as even the Landlord does not seem to state that he received all his rent exclusively via Mpesa.

Indeed the Tenant at paragraph 4 of his further affidavit has deponed that the Mpesa statements do not account for rent received in cash by the Landlord.



7. It is also interesting to note that going by the Landlord's calculations, it would appear that the Tenant owed more than half of the rent payable which would easily mean that the Tenant has not paid rent for a period of more than six (6) years. If this were to be so, why then would the Landlord instruct Auctioneers to levy distress against the Tenant to recover rent arrears amounting to Kshs. 65,500/= on 23.3.2024 (see the proclamation of attachment by Eshikhoni Auctioneers dated 23.3.2024).
8. On 19.2.2024, Counsel for the Landlord, M/S K.W. Nakitare & Company Advocates wrote a demand letter to the Tenant demanding the payment of rent arrears amounting to Kshs. 75,500/=. Why did the Landlord not make a demand of Kshs. 216,540/= if indeed that was the rent truly owed?
9. On 15.5.2024, the Tenant admitted to owing the Landlord Kshs. 9,000/= and the Tribunal ordered her to pay the same. On 30.05.2024, when this matter came up for mention, Counsel for the Landlord confirmed that the said sum of Kshs. 9,000/= had been cleared by the Tenant. This therefore meant that as far as the Tenant was concerned, she did not owe the Landlord any rent.
10. The Landlord is required by Section 3(3) of [Cap 301](#) to keep rent book which would contain all details of rent payments and repairs carried out to the premises. In this regard, the said Section provides as follows:-

“The Landlord of a controlled tenancy shall keep a rent book in the prescribed form, of which he shall provide a copy for the tenant and in which shall be maintained a record authenticated in the prescribed manner, of the particulars of the parties to the tenancy and the premises comprised therein, and the details of all payments of rent and of all repairs carried out to the premises.”

Under Section 3(4) of [Cap 301](#), any person being a Landlord who fails to keep a rent book or to provide a copy thereof as required by sub-Section (3) above, shall be guilty of an offence and liable to a fine not exceeding Two Thousand shillings (Kshs. 2,000/=) or to imprisonment for a period not exceeding two months or to both such fine and imprisonment.

11. Although the Landlord has not produced any rent book, it would not be appropriate at this interlocutory stage to make any adverse findings on account of the said failure as the prayers sought in the Application are in the interim pending the hearing of the suit. But suffice it to say that, it is not possible to state with certainty at this stage whether or not the Tenant is in rent arrears and even if so, how much would such rent arrears amount to? The Landlord cannot in these circumstances be allowed to levy distress for rent against the Tenant.
12. I am therefore satisfied that in the circumstances, the Tenant has established a *prima facie* case with a probability of success and is deserving of the injunctive relief sought in prayers (c) of her Application. The Tenant will also have the costs of the Application.
13. The determination of the rent arrears, if any, will be subjected to full hearing.
14. Parties to fix a hearing date of the Reference.

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

HON. CYPRIAN MUGAMBI - CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the absence of the parties.

Court: Matter to be mentioned on 21.8.2024. The registry to inform the parties.



HON. CYPRIAN MUGAMBI - CHAIRPERSON
BUSINESS PREMISES RENT TRIBUNAL

