



**Muthinzi v Malombe (Tribunal Case E1223 of 2022)
[2023] KEBPRT 1111 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1111 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1223 OF 2022
CN MUGAMBI, CHAIR
OCTOBER 19, 2023**

BETWEEN

DENNIS KYALO MUTHINZI APPLICANT

AND

REBECCA NDENDWA MALOMBE RESPONDENT

RULING

1. The Tenant's application dated 28.12.2022 seeks orders directing the Respondent to open the suit premises failing which the tenant is to be allowed to therein break and gain access with the assistance of the OCS, Mutomo police station. The application has also sought an order restraining the Respondent from in any manner whatsoever interfering with the tenant's occupation and lawful enjoyment of the suit premises at Mutomo. Police assistance has also been sought in ensuring compliance with the court orders prayed for.

The Tenant's depositions

2. The tenant's affidavit in support of his application may be summarized as follows hereunder:-
 - a. That he has been a tenant in the suit premises paying a monthly rent of Kshs. 25,000/=.
 - b. That on 5.12.2022, the landlord issued an illegal notice to the tenant and on 22.12.2022, the landlord unlawfully closed the business premises denying the tenant access.
 - c. That the tenant has dutifully paid his rent except the rent for the month of December 2022 which failure he attributes to the loss of his wife.
 - d. That the tenant has heavily invested in the suit premises.



The Landlord's depositions

3. The Respondent's replying and supplementary affidavits may be summarized as follows:-
 - a. That the Applicant is her tenant at her premises located at Mutomo market plot No. 184 at an agreed rent of Kshs. 25,000/=.
 - b. That the tenant has been uncooperative in having the issue of rent arrears resolved amicably.
 - c. That the tenant has accumulated rent arrears totaling Kshs. 69,000/= as at January 2023 and the tenant has now developed a habit of paying his rent piecemeal and has also started inciting other tenants.
 - d. That the tenant is in rent arrears of Kshs. 77,000/= as at February 2023.
 - e. That in the circumstances the tenant has not come to court with clean hands.

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 has complained that the landlord issued him with an illegal notice to terminate tenancy and further closed down the tenant's premises. I have seen the "Notice" dated 5.12.2022 annexed to the tenant's affidavit. The same is not the proper and legal notice under Section 4(2) of the Act and further does not meet the requirements of Section 4(4) and (5) of [Cap 301](#). I hold the same to be an invalid notice and of no legal consequence.
6. The tenant has also complained that the landlord closed down the suit premises on 22.12.2022. The landlord has not denied this allegation by the tenant But I also note this particular issue was dealt with by the Tribunal when it issued the orders of 3.1.2023.
7. The issue that remains for my determination is the one of rent. The tenant has stated in his affidavit that the only rent he owed as at the time he swore the affidavit was the rent for the month of December 2022 and which he was willing to pay. The landlord's replying and further affidavits depone to the fact that the tenant owes the landlord rent in the sum of Kshs. 77,000/=. In the absence of any deposition to the contrary, I am convinced that indeed the tenant owes the said rent to the landlord.
8. In order to meet the ends of justice in this case, I will therefore make the following orders:-
 - a. That the landlord is restrained from illegally terminating the Applicant's tenancy.
 - b. That the tenant shall clear all the rent arrears (to date) owed to the landlord within the next thirty days from today (19.10.2023).
 - c. That the tenant failing to comply with order (b) above, the landlord will be at liberty to levy distress for rent against the tenant.
 - d. That each party shall bear their own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19TH DAY OF OCTOBER 2023.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

