



**Mohamed t/a Stealth Auto Care v Mwangi & another (Tribunal Case
E207 of 2023) [2023] KEBPRT 1309 (KLR) (17 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1309 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E207 OF 2023
P MAY, MEMBER
OCTOBER 17, 2023**

BETWEEN

AHMED TAJIR MOHAMED T/A STEALTH AUTO CARE TENANT

AND

JANE NYAMBURA MWANGI 1ST LANDLADY

JANE WAIRIMU MWANGI 2ND LANDLADY

RULING

1. There were two (2) active files involving the parties herein. The same were consolidated but it is prudent to lay the background to the dispute for it to be placed in its proper context. The tenant filed the reference dated 22nd February, 2023 whereby they prayed for a plethora of orders against the Respondents including assessment of loss.
2. The respondents on the other hand approached the Tribunal by filing the reference dated 27th March, 2023 against the tenant for breaching the terms of the lease; by failing to pay rent when it fell due and parking motor vehicles outside the leased area.
3. Contemporaneous with the references, the protagonists filed applications by way of certificate seeking adverse orders against each other. The tenant's notice of motion application dated 20th March, 2023 sought to stay the notice of termination dated 9th March, 2023 amongst the orders. The Respondents application on the other hand sought for leave to levy distress.

Preliminary objection

4. The tenant raised a notice of preliminary objection dated 5th May, 2023 on the grounds that the notice issued did not conform to the mandatory provisions of cap 301 and in the alternative that the respondents did not issue any notice before the commencement of the reference dated 27th March, 2023.



5. As a matter of practice, the hearing of the preliminary objection took precedence. The parties elected to canvass the notice of preliminary objection together with the application by way of written submissions. I have considered the submissions on record and would proceed as follows:
6. It is prudent to rehash the definition or scope of a preliminary objection as was stated in the locus classicus case of; *Mukhisa Biscuit v West End Distributors*, where the court pronounced itself thus :

“...Preliminary objection is in the nature of what used to be a demurer. It raises pure points of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any facts have to be ascertained or if what is sought is the exercise of judicial discretion.”
7. The test of what needs to be considered for a preliminary objection to succeed was discussed in the case of; *David Karobia Kiiru v Charles Nderitu Gitoi & another* [2018] eKLR at paragraph 12, where Justice Ohungo at paragraph 12 stated;

“For a preliminary objection to succeed, the following tests ought to be satisfied. Firstly, it should raise a point of law, secondly, it is argued on the assumption that all the facts pleaded by the other side are correct and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid preliminary objection should, if successful dispose of the suit.”
8. I have perused through the submissions on record. The landlord has given a detailed process on the manner of terminating the tenancy and the nature of the forms to be issued. The present dispute revolves around the same. The landlady has not denied the grounds set out in the preliminary objection. The preliminary objection is therefore allowed to the extent that the reference was commenced before the landlord could issue a notice as envisaged under section 4(2) of cap 301.
9. Having made the above findings, the Tribunal would however pursuant to the powers granted to it under Section 12 proceed to make appropriate orders. The Tribunal had an opportunity of carrying out inspection on the demised premises. The inspection revealed that the tenant had clearly been disconnected from electricity for a period of time. They could not carry out their operations during the period.
10. The issue of power connection is highly disputed. As per the inspection, it is clear that the landladies had provided power supply but the same seems not to have fit the demand required by the tenant. The landladies laid blame on the utility service providers.
11. The preamble to the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, reads as follows: -

“An Act of Parliament to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected there with and incidental thereto.”
12. Flowing from the above, it is clear that the tenant succeeds partly and is entitled to some sort of reprieve but the same can only be undertaken while taking into consideration the landladies’ right to reap from the demised premises. Such a balance is critical in ensuring that the spirit and letter of cap 301 is maintained. The provisions of cap 301 provides for redress mechanism against any party that breaches the terms of the tenancy. In the event the landladies wish to have the tenant vacate the premises, the law provides for a clear but mandatory procedure to follow.



13. In the circumstances and in the interest of justice the following orders commend itself:
- a. The preliminary objection dated May 5, 2023 is allowed.
 - b. The tenant is awarded a waiver of rent for two months to mitigate the losses incurred.
 - c. Each party shall bear their own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF OCTOBER 2023.

HON. P. MAY - MEMBER

17. 10.2023

In the presence of Njeru for the Tenant/Applicant

No appearance for the Respondents

