



**Analytopedia Group Limited v Kedong Ranch Limited (Tribunal Case
E294 of 2024) [2024] KEBPRT 996 (KLR) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 996 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E294 OF 2024
P MAY, MEMBER
JUNE 27, 2024**

BETWEEN

ANALYTOPEDIA GROUP LIMITED TENANT

AND

KEDONG RANCH LIMITED LANDLORD

RULING

1. The application before me is the tenant's notice of motion 29th February, 2024 seeking for orders of temporary injunction against the landlord. The application is premised on the ground set out on its face and those elucidated in the supporting sworn by Luke Ouko. The same are as summarized below:
2. It is the tenant's contention that the landlord unilaterally and without notice sought to vary the terms of tenancy contrary to the mandatory provisions of [CAP 301](#). The tenant states that the landlord has since instructed an auctioneer to levy distress for recovery of deposit. The tenant has decried the punitive fees also meted by the auctioneer which they term illegal. The tenant maintains that they have paid all the rent due and are in any arrears as claimed by the landlord. The tenant thus prays that the Tribunal protects them through granting the prayers sought.
3. The application has been opposed through the replying affidavit sworn 27th March, 2024 by a director of the respondent. The landlord has given a chronology of the default in rent payment by the tenant starting from the initial tenant which is the sister company of the present tenant. The landlord stated that the tenant had defaulted in making rent payments for over 7 months. The parties elected to canvass the application by way of written submissions. I commend the counsel on record for their industry in filing well researched submissions. The tribunal therefore proceeds as follows:
4. The tenant approached this tribunal seeking for orders of injunction against the landlord on the grounds that the landlord had instructed auctioneers to levy distress thereby interfering with his peaceful enjoyment of the suit premises. The tenant argued that the levying of distress was illegal.



These assertions have to be considered against the requirements for the grant of orders of temporary injunction.

5. The power to grant a temporary injunction is discretionary. In this regard, we shall rely on the locus classicus case of *Giella v Cassman Brown & Co. Ltd* [1973] E.A 385, which outlined the conditions for the grant of a temporary injunction to the effect that; first, an applicant must show a prima facie case with a probability of success, secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. And thirdly, if in doubt, the court will decide an application on the balance of convenience.
6. On the first limb, the tenant has maintained that they have established a prima facie case as they are not in arrears. The tenant has disputed the amount demanded by the landlord. The landlord in rebuttal has offered a chronology of how the rent arrears were accrued. It is evident that there exists a discrepancy between the figures given by the parties which is supported by the other agreements that have been attached whose effect can only be determined upon hearing the parties.
7. On that premise, the Tribunal is convinced that the tenant has proven a prima facie case as the basis of initiating the proceedings were the alleged rent arrears.
8. In the case of *Airland Tours & Travel Limited vs. National Industrial Credit Bank Nairobi (Milimani) HCCC No. 1234 of 2002* stated that in an interlocutory application the Court is not required to make any conclusive or definitive findings of fact or law, most certainly not on the basis of contradictory affidavit evidence or disputed propositions of law. That was the same position adopted in the dicta in Nairobi High Court *Civil Case No. 517 of 2014 – Lucy Nungari Ngigi & 4 Others -vs- National Bank of Kenya Limited & Anor* (eKLR) where it was stated:

“....I am also aware that the 1st Defendant has raised issues in respect of the mortgage herein, their right to exercise the statutory power of sale, breach of the addendum, default of repayment of the loan etc. They have also raised some accountability issues from the 2nd Defendant on the purchase price. But even these queries should be reserved for and determined at the trial. These issues are in direct conflict with issues raised by the Plaintiffs and the 2nd Defendant. At this stage I should not make any comments or findings, or express opinions on the substantive issues in controversy in order to avoid hurting the trial herein...”

9. On the next limb of whether the tenant will suffer irreparable damage, the Tribunal draws guidance from *Halsbury's Laws of England, 3rd Edition* Volume 21, Paragraph 739 page 352 which defines irreparable injury as;

‘injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by grant of injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages, an injunction may be granted, if the injury in respect of which relief is sought is likely to destroy the subjected matter in question.’

10. The tenant has confirmed that they have been in occupation of the demised premises. While the said occupation is not absolute as it is subject to specific contractual obligations the same creates goodwill which if terminated abruptly may lead to the tenant being exposed to losses. Guided by the above decisions and legal texts, the Tribunal is persuaded that the prayers sought by the tenant are merited.



11. Consequently, I do find that the Tenant's application dated 29.02.2024 is merited and the same is allowed in terms of prayer 3. The parties to fix the reference for hearing on priority basis.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH JUNE, 2024

HON. PATRICIA MAY

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Ndolo holding brief for Kethi for the Applicant and in the absence of the Respondent

