



**Onywere v Ali & another (Tribunal Case E679 of 2023)
[2024] KEBPRT 265 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 265 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E679 OF 2023
A MUMA, AG. CHAIR & J ROP, MEMBER
MARCH 13, 2024**

BETWEEN

PROTAS OKENGO ONYWERE APPLICANT

AND

HAMIDA ALI 1ST RESPONDENT

RICHARD WAMBUA 2ND RESPONDENT

RULING

A. Parties and their Representatives

1. The Applicant, Protas Okengo Onywere is the tenant of the suit premises located in Kariobangi North in Nairobi (the “Tenant”).
2. The Applicant appeared in person in this matter.
3. The Respondent, Hamida Ali, is the proprietor of the suit premises and therefore the Landlady to that effect. (the “Landlady”).
4. The firm of Omenke Andeje & Company Advocates represents the Landlady in this matter.

B. Dispute Background

5. The Tenant moved this Honorable Tribunal vide a Reference and Application evenly dated 13th July 2023. The Tenant sought, among other orders, the following from this Honorable Tribunal:
 - I. To compel the Respondents to reopen the suit premises. In the event of non-compliance, the Tenant would be permitted to access the premises pending the hearing and determination of the suit.



- II. To compel the Respondents to immediately reopen the suit premises, thereby restoring the Tenant's access and enabling him to resume his business activities without any further interruptions pending the hearing and determination of the suit.
6. Having considered the Tenant's Application, the Tribunal via a court Order dated 14th July 2023 ordered that:
 - I. The Application be certified as urgent.
 - II The Respondents re-open the suit premises and in the event of non-compliance, the Tenant to break into the suit premises pending hearing of the application
 - III. The Respondents to immediately reopen the suit premises, restoring the tenant's access and allowing the Tenant to resume business activities without any further disruptions pending the hearing of the Application;
 - IV. The O.C.S of Kariobangi North Police Station ensures compliance with the Orders.
7. Subsequently, the Landlady filed a Replying Affidavit dated 25th October 2023 in response to the Tenant's Application and Reference dated 13th July 2023.

C. Tenant's Claim

8. The Tenant's Application dated 13th July 2023 is based on the ground that the Respondents illegally locked the Tenant out of the suit premises causing irreparable harm to his business operations and financial losses.
9. The Tenant avers that he has occupied the suit premises in Kariobangi North for 10 years during which period he has diligently paid his monthly rent without exception or delay.
10. The Tenant further avers that the current monthly rent that he is paying for the suit premises is Kshs.20,000 per month which he has consistently fulfilled.
11. Moreover, the Tenant avers that he owes the Landlady a sum of Kshs.35,000 which amounts to only one and a half months' rent arrears.
12. He avers that the Landlady's ulterior motive behind the lockout attempt is to lease the suit premises to a new tenant at an inflated monthly rate.

D. Landlady's Defence

13. The Landlady as per her Replying Affidavit dated 25th October 2023 avers that the Tenant began defaulting in making full rent payment in March where he paid Kshs.15,000 instead of the agreed sum of Kshs.20,000.
14. She further avers that the Tenant failed to pay the rent for April, May, June and July which prompted her to take action.
15. She contends that the Tenant paid the sum of Kshs.50,000 which sum was paid on 2nd October 2023 upon the courts order directed to the Applicant on 21st September 2023.
16. The Landlady avers that the Tenant is still in rent arrears of Kshs.95,000 for June, July, August, September and October.



17. She further contends that the Tenant is also in arrears in electricity from Kenya Power at the sum of Kshs.53,163 which remains unpaid and the same is tagged in her name by being the proprietor of the premises.

E. Issues for Determination

18. Having carefully perused all the pleadings and evidence presented before this Honorable Tribunal by the parties, it is therefore this Tribunal's respectful finding that the following issue is for determination;

F. Analysis and Findings

a. Whether the Tenant is in arrears?

19. From the outset, this Honorable Tribunal notes that neither party has disputed the monthly rent amount of Kshs.20,000 nor the fact that the Tenant is in rent arrears. The Tenant, as per his Application dated 13th July 2023, has acknowledged the outstanding rent arrears and has expressed willingness to settle the amount in installments. However, the main point of contention before this Tribunal is the specific amount of rent arrears owed by the Tenant to the Landlady.
20. According to the Tenant's Application dated 13th July 2023, the Tenant claims rent arrears totaling Kshs.35,000 for one and a half months. On the other hand, as of 21st January 2024, the Landlady claims rent arrears amounting to Kshs.95,000.
21. During the Tribunal's proceedings on 21st September, 2023, the Tenant was directed to pay Kshs.50,000 by 31st October, 2023. The Tenant complied with this direction and paid the amount, which was confirmed by the Landlady in court on 3rd October, 2023. It is therefore this Tribunal's contention that the Tenant has completed his Kshs.35,000 rent arrears.
22. However, during the Tribunal's proceedings on 26th January, 2024, the Tenant admitted to not paying rent for December and January, resulting in an additional arrear of Kshs.40,000.
23. On the other hand, while the Landlady claims rent arrears of Kshs.95,000 as of 21st January, 2024, she has failed to provide any evidence, such as account statements or receipts, to support this claim.
24. Under Section 3(3) of the [Landlord and Tenant Shops Hotels and Catering Establishments Act](#) Cap 301 Laws of Kenya (referred to as "the Act"), the Landlord of a controlled tenancy is required to maintain a rent book and provide a copy to the tenant. This rent book should contain records of the parties involved, details of the premises, and information about rent payments and repairs.
25. It is therefore the Tribunal's findings that the Landlady has failed to provide concrete evidence such as receipts, statements of accounts, or the statutory rent book to support her claim of Kshs.95,000 in rent arrears.
26. The Tribunal acknowledges the Tenant's willingness to pay the outstanding rent arrears, as stated in the application dated 13th July, 2023, and his compliance with the Tribunal's directions.
27. Additionally, the Tribunal notes that the Tenant has not disputed the Landlady's claim of electricity arrears from Kenya Power amounting to Kshs.53,163.
28. In light of the above, the Tribunal's contention is that the cumulative rent arrears owed to the Landlady amount to Kshs.40,000, and the electricity arrears owed to Kenya Power amount to Kshs.53,163.
29. Having made the above findings, this Honorable Tribunal shall now make the following orders in the upshot.



G. Orders

30. In the upshot, the Tenant's Reference and Application dated 13th July 2023 is hereby upheld in the following terms:
- a. The Tenant to pay the rent arrears of Kshs.40,000 and electricity arrears of Kshs.53,163 within 3 months, i.e Kshs.31,054 per month over and above the monthly rent of Kshs.20,000 (being Kshs.51,054 per month).
 - b. Failure on any one installment, the Landlady will be at liberty to not only distress for the whole rent but to take back vacant possession immediately.
 - c. The [O.C.S](#) of Kariobangi North Police Station to ensure compliance of the above orders of this Honorable Tribunal.
 - d. Reference is settled on similar terms.

HON A. MUMA - AG CHAIR/MEMBER

HON. JACKSON ROP - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 13TH DAY OF MARCH 2024 IN THE PRESENCE OF KWANYE FOR THE LANDLORD NA FOR THE TENANT/APPLICANT

HON A. MUMA -AG CHAIR/MEMBER

HON. JACKSON ROP - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

