



**Gichari v Maworks Investments Company Limited & 2 others (Tribunal Case E278 of 2024) [2024] KEBPRT 1330 (KLR) (12 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1330 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E278 OF 2024  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
SEPTEMBER 12, 2024**

**BETWEEN**

**ALEX KIMATHI GICHARI ..... TENANT**

**AND**

**MAWORKS INVESTMENTS COMPANY LIMITED ..... 1<sup>ST</sup> LANDLORD**

**JACQUELINE NJERI NGURU ..... 2<sup>ND</sup> LANDLORD**

**EVELYNE K MUTHAMIA ..... 3<sup>RD</sup> LANDLORD**

**RULING**

**A. Dispute Background**

1. The tenant/applicant moved this Tribunal vide a Reference dated 27<sup>th</sup> February 2024 under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301, Laws of Kenya with a complaint that the landlords had threatened to evict him by issuing an incurably defective notice to vacate contrary to the said statute.
2. The tenant/applicant simultaneously filed a notice of motion under a certificate of urgency dated 27<sup>th</sup> February 2024 in which he sought for restraining orders against the landlords from interfering with his quiet occupation and lawful enjoyment of the suit premises at Imenti House pending the hearing and determination of the case. He also sought for orders that the Respondents allows him unlimited access to the business premises and to restrain them from letting out the suit premises to another tenant pending hearing and determination of the case.
3. The application is predicated upon the grounds set out on the face thereof and is further supported by an affidavit of even date wherein the tenant deposes that he pays a sum of KShs 40,000/= per month in respect of the suit premises and only owed a sum of KShs 5000/= as at February 2024.



4. The Respondents are accused of issuing illegal notices dated 2<sup>nd</sup> November 2022 and 23<sup>rd</sup> February 2024 against the tenant, demanding him to vacate the suit premises in contravention of Cap 301, Laws of Kenya. The notices are annexed to the supporting affidavit.
5. The tenant deposes that he repaired and improved the suit premises at a cost of Kshs 100,000/= and has established a business goodwill.
6. Fearing a possible illegal eviction, the tenant moved this Tribunal to restrain the landlords. He pleads that he stood to suffer irreparable loss and damage should the landlord enforce their notices.
7. Interim ex-parte orders were granted on 28<sup>th</sup> February 2024 pending hearing inter-partes on 26<sup>th</sup> March 2024. On the latter date, the tenant complained that the Respondents had locked him out of the suit premises and disconnected water and electricity. The landlords however accused him of locking himself out and denied allegations of having disconnected water and electricity supply to the tenant's premises.
8. This Tribunal therefore ordered for inspection of the suit premises by its own Rent Inspector to establish whether it was connected with water and electricity. The matter was therefore set down for mention on 12<sup>th</sup> April 2024 for further orders.
9. The inspection was carried out on 2<sup>nd</sup> April 2024 and a report filed herein. The report confirmed that the tenant's tools of trade (gas pipes and cooking system) had been dismantled and removed from the business premises thereby preventing him from operating. The caretaker informed the Rent Inspector that the landlord had kept the items in the store. There was little water running from the taps whose pressure was low and the tenant informed the Inspector that the taps were opened on the inspection date. There was no electricity power supply to the premises and there was no token meter. The tenant could not access the token meter box.
10. On 11<sup>th</sup> April 2024, the 3<sup>rd</sup> respondent swore a replying affidavit wherein she deposes in material part as follows; -
  - i. That the tenant leased the suit premises for a period of 2 years and 7 months on 14<sup>th</sup> February 2024 at Kshs 40,000 per month.
  - ii. That the tenant owed Kshs 745,000 in rent arrears as at April 2024 whose tabulation is set out at paragraph 5 of the affidavit.
  - iii. That the landlord has not interfered with the tenant's tenancy despite falling into arrears.
  - iv. That the landlord was issued with a notice dated 16<sup>th</sup> February 2024 by the management of Imenti House from whom they have leased the suit premises stopping all tenants in the premises from using open and closed fires within the building to avoid forfeiture of the leases. The notice required compliance within 14 days thereof.
  - v. On 23<sup>rd</sup> February 2024, the landlords through their lawyers wrote a letter to the tenant inter-alia forwarding the head landlord's letter in which it intimated that failure to comply would lead to termination of his lease. The letters are marked EM-1.
  - vi. The said notice was issued following a fire incident in the neighboring Ebrahim Shopping Mall. However, no notice to vacate the suit premises had been issued.
  - vii. The landlords deny knowledge of the alleged repairs and improvements of the business premises and observe that no documentation of the sum of Kshs 100,000/= has been exhibited.



11. On 12<sup>th</sup> April 2024, this Tribunal ordered the landlords to release the tenant's goods, allow him access to the token meter and reconnect water within 7 days thereof failing which rent payment would remain suspended.
12. Both parties were granted 28 days to file and serve their written submissions with each party taking 14 days and the tenant starting. The matter was fixed for mention on 20<sup>th</sup> May 2024 to confirm compliance.
13. The tenant filed a further affidavit sworn on 22<sup>nd</sup> April 2024 wherein he reiterated that he only owed the landlord a sum of Kshs 5000/= being the balance for the month of February 2024. He attached Mpesa statements to prove his rent payments.
14. The tenant deposed that rent was verbally reduced to Kshs 20,000/= in November 2022 after he surrendered the balcony area to the owner of Club Zodiak. The agreement was entered into with the 3<sup>rd</sup> Respondent.
15. According to the tenant, the landlord holds his one months' rent deposit of Kshs 40,000/= and Kshs 80,000/= for service charge. The tenant reiterates and annexes copies of what he refers to as illegal notices to terminate his tenancy.
16. The tenant accuses the landlords of failure to comply with the orders of 17<sup>th</sup> April 2024 by failing to return his tools of trade and of disconnecting water and electricity to the suit premises thereby disrupting his hotel business. He exhibits photographs of the dismantled premises and seeks for dismissal of the contents of the replying affidavit.
17. The landlords filed a notice of motion dated 18<sup>th</sup> May 2024 seeking for the following orders; -
  - i. That the Tribunal's directions issued on 12<sup>th</sup> April 2024 directing the landlords to return the cooking equipment to the business premises forming the subject of the reference be set aside.
  - ii. That Jacqueline Njeri Nguru and Evelyne K. Muthamia, the named landlords be removed as parties from the present proceedings.
  - iii. That the landlord's caretaker, Makford Muoki be directed to appear before the Tribunal for clarification on his representations to the Tribunal's Inspector on the whereabouts of the cooking equipment forming the subject of the reference.
18. The application is predicated on the grounds set out on face thereof and the affidavit of even date sworn by the 3<sup>rd</sup> landlord wherein she deposes as follows; -
  - i. That she is responsible for the day to day running of the 1<sup>st</sup> landlord/respondent which Company is the tenant's landlord in respect of the suit premises.
  - ii. That neither her nor the 2<sup>nd</sup> Respondent is a landlord to the Applicant and as such their names ought to be struck out from the present proceedings.
  - iii. That they were aware of the inspection report and this Tribunal's subsequent orders directing the return of the tenant's properties which were disposed of in February 2024.
  - iv. The 1<sup>st</sup> landlord had been issued with notice marked EM-1 by Meru Central Coffee Union to stop any cooking activities within its leased premises in default of which, its lease would be terminated.



- v. That in the circumstances, the landlords are unable to comply with this Tribunal's directions as the cooking equipment is not available since they do not maintain a store and the cooking equipment was disposed of in February 2024.
  - vi. That the bringing of cooking equipment into the business premises would lead to automatic breach of the lease agreement on the part of the 1<sup>st</sup> landlord and consequential loss of tenancy.
19. The application is opposed through the tenant's replying affidavit sworn on 30<sup>th</sup> July 2024 wherein it is deposed that the landlords despite service of the court orders of 12<sup>th</sup> April 2024 went ahead to dismantle and cart away his cooking equipment in flagrant breach thereof. As such, they are not entitled to variation orders as they have come to court with unclean hands.
  20. The tenant deposes that the 2<sup>nd</sup> Respondent is sued as a director of the 1<sup>st</sup> Respondent as evidenced by annexure marked AKG3. He further deposes that the landlords kept the cooking equipment in their store after dismantling it.
  21. The tenant deposes that the alleged disposal of the cooking equipment was done against an existing court order which had been duly served upon them. As such, they are guilty of contempt of court.
  22. The two applications were directed to be disposed of by way of written submissions and both parties complied. The tenant's submissions are dated 28<sup>th</sup> August 2024 while those of the landlord are dated 21<sup>st</sup> August 2024.

#### **B. Issues for determination**

23. The following issues arise for determination; -
  - a. Whether the tenant is entitled to the reliefs sought in the reference and application dated 27<sup>th</sup> February 2024.
  - b. Whether the landlords are entitled to the reliefs sought in the application dated 18<sup>th</sup> May 2024.
  - c. Who shall bear the costs of both applications?

#### **Issue (a) Whether the tenant is entitled to the reliefs sought in the application dated 27<sup>th</sup> February 2024**

24. The tenant/applicant moved this Tribunal vide a Reference dated 27<sup>th</sup> February 2024 under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301, Laws of Kenya with a complaint that the landlords had threatened to evict him by issuing an incurably defective notice to vacate contrary to the said statute.
25. The tenant/applicant simultaneously filed a notice of motion under certificate of urgency dated 27<sup>th</sup> February 2024 in which he sought for restraining orders against the landlords from interfering with his quiet occupation and lawful enjoyment of the suit premises situate at Imenti House pending the hearing and determination of the case. He also sought for orders that the Respondents allows him unlimited access to the business premises and to restrain them from letting out the suit premises to another tenant pending hearing and determination of the case.
26. The application is predicated upon the grounds set out on the face thereof and is further supported by an affidavit of even date, wherein the tenant deposes that he pays a sum of Kshs 40,000/= per month in respect of the suit premises and only owed a sum of Kshs 5000/= as at February 2024.



27. The Respondents are accused of issuing illegal notices dated 2<sup>nd</sup> November 2022 and 23<sup>rd</sup> February 2024 against the tenant demanding him to vacate the suit premises in contravention of Cap 301, Laws of Kenya. The notices are annexed to the supporting affidavit.
28. The tenant deposes that he repaired and improved the suit premises at a cost of Kshs 100,000/= and has established a business goodwill.
29. Fearing a possible illegal eviction, the tenant moved to this Tribunal to restrain the landlords. He pleads that he stood to suffer irreparable loss and damage should the landlord enforce their notices.
30. Interim ex-parte orders were granted on 28<sup>th</sup> February 2024 pending hearing inter-partes on 26<sup>th</sup> March 2024. On the latter date, the tenant complained that the Respondents had locked him out of the suit premises and disconnected water and electricity. The landlords however accused him of locking himself out and denied allegations of having disconnected water and electricity supply to the tenant's premises.
31. This Tribunal therefore ordered for inspection of the suit premises by its own Rent Inspector to establish whether it was connected with water and electricity. The matter was therefore set down for mention on 12<sup>th</sup> April 2024 for further orders.
32. The inspection was carried out on 2<sup>nd</sup> April 2024 and a report filed herein. The report confirmed that the tenant's tools of trade (gas pipes and cooking system) had been dismantled and removed from the business premises thereby preventing him from operating. The caretaker informed the Rent Inspector that the landlord had kept the items in the store. There was little water running from the taps whose pressure was low and the tenant informed the Inspector that the taps were opened on the inspection date. There was no electricity power supply to the premises and there was no token meter. The tenant could not access the token meter box.
33. On 11<sup>th</sup> April 2024, the 3<sup>rd</sup> Respondent swore a replying affidavit wherein she deposes in material part that the tenant leased the suit premises for a period of 2 years and 7 months on 14<sup>th</sup> February 2024 at Kshs 40,000 per month.
34. She further deposed that the tenant owed Kshs 745,000 in rent arrears as at April 2024 whose tabulation is set out at paragraph 5 of the affidavit. She denied that the landlord had interfered with the tenant's tenancy despite falling into rent arrears.
35. According to the 3<sup>rd</sup> Respondent, the landlord was issued with a notice dated 16<sup>th</sup> February 2024 by the management of Imenti House from whom they have leased the suit premises to stop all tenants in the premises within 14 days from using open and closed fires within the building to avoid forfeiture of their leases.
36. On 23<sup>rd</sup> February 2024, the landlords through their lawyers wrote a letter to the tenant inter-alia forwarding the head landlord's letter in which it intimated that failure to comply would lead to termination of his lease. The letters are marked EM-1.
37. The said notice was issued following a fire incident in the neighboring Ebrahim Shopping Mall. However, no notice to vacate the suit premises had been issued to the tenant.
38. The landlords deny knowledge of the alleged repairs and improvements of the business premises and observe that no documentation of the sum of Kshs 100,000/= has been exhibited.
39. On 12<sup>th</sup> April 2024, this Tribunal ordered for the release of the tenant's goods, and directed the Respondents to allow him access to the token meter and reconnect water within 7 days thereof failing which rent payment would remain suspended.



40. Both parties were granted 28 days to file and serve their written submissions with each party taking 14 days and the tenant starting. The matter was fixed for mention on 20<sup>th</sup> May 2024 to confirm compliance.
41. The tenant filed a further affidavit sworn on 22<sup>nd</sup> April 2024 wherein he reiterated that he only owed the landlord a sum of Kshs 5000/= being the balance for the month of February 2024. He attaches Mpesa statements to prove his rent payments.
42. The tenant deposes that rent was verbally reduced to Kshs 20,000/= in November 2022 after he surrendered the balcony area to the owner of Club Zodiak. The agreement was entered into orally with the 3<sup>rd</sup> Respondent.
43. According to the tenant, the landlord holds his one months' rent deposit of Kshs 40,000/= and Kshs 80,000/= for service charge. The tenant reiterates and annexes copies of what he refers to as illegal notices to terminate his tenancy.
44. The tenant accuses the landlords of failure to comply with the orders of 12<sup>th</sup> April 2024 by failing to return his tools of trade and disconnecting water and electricity to the suit premises thereby disrupting his hotel business. He exhibits photographs of the dismantled premises and seeks for dismissal of the contents of the replying affidavit.
45. It is not contested that the tenancy herein is controlled within the meaning and interpretation of Section 2(1) of Cap 301, Laws of Kenya. Sections 4(1) & (2) of the said statute provides as follows;
  - “(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with the following provisions of this Act.
  - (2) A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.”
46. We have looked at the letters written to the tenant herein and noted that the same are not in the prescribed form. They are therefore invalid in so far as they purported to alter the terms of his tenancy in respect of the demised premises. A hotel business cannot operate without fire as sought by the landlords. They entered the suit premises and dismantled the cooking system and carted away the equipment without a court order in a daring act of impunity.
47. We do not hesitate to find and hold that the manner in which the Respondents dealt with the tenant is illegal and no court of equity will countenance an illegality. As such, an order of injunction ought to issue against the Respondents to right the wrong in line with the decision in the court of appeal case of Aikman & others Vs Muchoki & others (1982) eKLR where it was held as follows; -
 

“The conditions for the grant of an interlocutory injunction were correctly considered by the learned judge by reference to the decisions of the Court of Appeal in EA Industries Ltd v Trufoods Ltd [1972] EA 420, Giella v Cassman Brown & Co Ltd. [1973] EA p 358, and Nsubuga and another v Mutawe [1974] EA 487; The conditions are (1) the probability of success (2) irreparable harm which would not be adequately compensated for by damages, and (3) if in doubt, then on a balance of convenience.



The conditions spelled out above for the grant of an interlocutory injunction were rightly understood but wrongly applied as follows: first, the appellants being lawfully in possession of the estates under the authority of the debentures executed by Mbo and Loresho, and the defendants having unlawfully seized and continuing in possession of the estates, the appellants had shown a clear and overwhelming prima facie probability of success; the court ought never to condone and allow to continue a flouting of the law. Those who flout the law by infringing the rightful title of others, and brazenly admit it, ought to be restrained by injunction. If I am adding a new dimension for the grant of an interlocutory injunction, be it so. Equity will not assist law-breakers.”

48. In the instant case, the Respondents issued an illegal notice altering the terms of his tenancy and without any court order went ahead to dismantle and cart away the cooking equipment from the demised premises. They claim that the equipment was disposed of. No authority was sought from the court for such entry, removal and disposal which was done against clear court orders restraining such conduct. Although there is no application for contempt of court before us, the said conduct is to be frowned upon by this Tribunal.
49. In the premises, we shall allow the tenant’s application dated 27<sup>th</sup> February 2024 in terms of prayers 2, 3, 4 & 5.

**Issue b) Whether the landlords are entitled to the reliefs sought in the application dated 18<sup>th</sup> May 2024.**

50. The landlords filed a notice of motion dated 18<sup>th</sup> May 2024 seeking for the following orders; -
- I. That the Tribunal’s directions issued on 12<sup>th</sup> April 2024 directing the landlords to return the cooking equipment to the business premises forming the subject of the reference be set aside.
  - II. That Jacqueline Njeri Nguru and Evelyne K. Muthamia, the named landlords be removed as parties from the present proceedings.
  - III. That the landlord’s caretaker, Makford Muoki be directed to appear before the Tribunal for clarification on his representations to the Tribunal’s Inspector on the whereabouts of the cooking equipment forming the subject of the reference.
51. The application is predicated on the grounds set out on the face thereof and the affidavit of even date sworn by the 3<sup>rd</sup> landlord wherein she deposes as follows; -
- a. That she is responsible for the day to day running of the 1<sup>st</sup> landlord/respondent which Company is the tenant’s landlord in respect of the suit premises.
  - b. That neither her nor the 2<sup>nd</sup> Respondent is a landlord to the Applicant and as such their names ought to be struck out from the present proceedings.
  - c. That they were aware of the inspection report and this Tribunal’s subsequent orders directing the return of the tenant’s properties which were disposed of in February 2024.
  - d. The 1<sup>st</sup> landlord had been issued with notice marked EM-1 by Meru Central Coffee Union to stop any cooking activities within its leased premises in default of which, its lease would be terminated.





- e. That in the circumstances, the landlords are unable to comply with this Tribunal's directions as the cooking equipment is not available since they do not maintain a store and the cooking equipment was disposed of in February 2024.
  - f. That the bringing back of the cooking equipment into the business premises would lead to automatic breach of the lease agreement on the part of the 1<sup>st</sup> landlord and consequential loss of tenancy.
52. The application is opposed through the tenant's replying affidavit sworn on 30<sup>th</sup> July 2024 wherein, it is deposed that the landlords despite service of the court orders of 12<sup>th</sup> April 2024 went ahead to dismantle and cart away his cooking equipment in flagrant breach thereof. As such, they are not entitled to variation orders as they have come to court with unclean hands.
53. The tenant deposes that the 2<sup>nd</sup> Respondent is sued as a director of the 1<sup>st</sup> Respondent as evidenced by annexure marked AKG3. He further deposes that the landlords kept the cooking equipment in their store after dismantling it.
- The tenant deposes that the alleged disposal of the cooking equipment was done against an existing court order which had been duly served upon them. As such, they are guilty of contempt of court.
54. It is clear from the record that the landlords' application is an afterthought and is brought with the sole intention of defeating the orders issued herein in favor of the tenant. It will be noted that the issues raised therein were not raised in the replying affidavit of the 3<sup>rd</sup> Respondent sworn on 11<sup>th</sup> April 2024. The landlords were thrown into a spin after the report by this Tribunal's Rent Inspector confirmed that they had contemptuously failed to comply with the orders of 28<sup>th</sup> February 2024. He who seeks equity must come to court with clean hands and must do equity. The landlords have not done equity.
55. We note that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents seek to be removed from the proceedings so as to escape from meeting the obligations set out in the various court orders made herein. We cannot aid nor abet such an escape from the law and we find and hold that they are proper parties to the instant proceedings.
56. In view of the foregoing, the landlords' application dated 18<sup>th</sup> May 2024 is hereby dismissed.
57. In regard to the tenant's cooking equipment which was dismantled and carted away by the Respondents, we direct the tenant to file documents in proof of their replacement cost including that of installing the same together with any loss of business or otherwise for assessment of damages by this Tribunal in the next 14 days hereof.
58. The landlords' alleged claim of rent arrears against the tenant is not part of the reference nor any application before this Tribunal and shall not be entertained in this matter since it was first raised in the 3<sup>rd</sup> Respondent's replying affidavit of 11<sup>th</sup> April 2024 and is not part of their application dated 18<sup>th</sup> May 2024. Any attempt to introduce it in subsequent proceedings will not be entertained.

#### **Issue (d) Who shall bear the costs of both applications?**

59. As regards costs, the same are in the Tribunal's discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall award costs of both applications to the tenant/applicant.

#### **C. Orders**

60. In view of the above analysis the orders which commend to us are;
- a. The tenant's application dated 27<sup>th</sup> February 2024 is allowed in terms of Prayers 2, 3, 4 & 5.





- b. The landlords' application dated 18<sup>th</sup> May 2024 is hereby dismissed.
- c. The tenant shall file documents in proof of the replacement cost of the cooking equipment including that of installing the same together with any loss of business or otherwise for assessment of damages by this Tribunal in the next 14 days hereof.
- d. The order for suspension of rent shall remain in force until the tenant's business is back into operation.
- e. The matter shall be mentioned on 8<sup>th</sup> October 2024 for further directions.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12<sup>TH</sup> SEPTEMBER 2024**

**HON. GAKUHI CHEGE (PANEL CHAIRPERSON)**

**HON JOYCE OSODO (MEMBER)**

**BUSINESS PREMISES RENT TRIBUNAL**

In the presence of:

Chidi for the landlord

Onyore for the tenant

