



**Karoki v Wangui (Tribunal Case E1012 of 2022)
[2023] KEBPRT 1162 (KLR) (Civ) (6 April 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1162 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E1012 OF 2022
CN MUGAMBI, CHAIR
APRIL 6, 2023**

BETWEEN

SAMSON NJOROGE KAROKI TENANT

AND

JOYCE WANGUI LANDLORD

RULING

1. The applications due for determination on this ruling are the tenant's application dated 27.10.2022 and the landlord's application dated 15.12.2022. The tenant's application seeks orders restraining the Respondent/landlord from interfering with the Applicant's quiet occupation and lawful enjoyment of the suit premises and an order that the Respondent be restrained from disconnecting the tenant's electricity and water supply.
2. The landlord's application dated 15.12.2022 seeks for an order that the suit herein be dismissed for misjoinder of parties.
3. I will deal with the application dated 15.12.2022 first as it seeks summary orders which if allowed, would determine and/or terminate these proceedings.

The Landlord's depositions in support of the Application dated 15.12.2022

4. The Respondent has filed an affidavit sworn on 1.12.2022 wherein she has deponed that the Applicant herein is a stranger to the suit premises as the Respondent has leased the same to a company called County 2 County Bar and Grill #47.
5. The Respondent has therefore deponed that the suit herein is misplaced as there is no tenant as the Applicant herein and this misjoinder is incurable and further therefore, there arises no cause of action against the Respondent.



The Tenant's depositions in reply to the Landlord's affidavit

6. The tenant has deponed in his affidavit sworn on 2.2.2023 that on 12.7.2019, HE, trading as, County to County Grill entered into a lease agreement over the suit premises with the Respondent for a period of ten years and on other terms agreed on the lease.
7. The tenant depones that the allegation that the Respondent entered into an agreement with County to County Bar and Grill Restaurant Limited is false as the tenant has always traded as County to County Choma Grill, the company, incorporated on 21.11.2019 could not have entered into an agreement with the Respondent on 12.7.2019, while it was not in existence.
8. The tenant depones further that he is not a stranger to the Respondent as he has been dealing with her personally including depositing rent in the Respondent's accounts.
9. The rest of the tenants depositions are in further reply to the landlord's affidavit to the application dated 17.10.22 and I will deal with them at the right time.

Analysis and determination

10. The Respondent's submission is that the Respondent entered into a lease agreement with an entity known as County 2 County Bar and Grill Restaurant #47 and on the examination of the lease by the Respondent, the same does not indicate that the tenant was even a party to the said agreement. On the other hand, it is the tenants submission that one Samson Njoroge Karoki was at all material times the holder and sole proprietor of a business known as County to County Choma Grill registered on 5.6.2018.
11. I have seen the lease agreement between the parties. It is the one dated 12.7.2019 and is entered into between Joyce Wangui Wachira (t/a Paddy Distributors) and County 2 County Bar and Grill Restaurant #47. The agreement has been executed by Henry Waweru and Sam Karoki on behalf of the tenant. The lessee in the agreement has been defined to include the lessees' personal representatives and assigns and I have not seen any suggestion that County 2 County Bar and Grill Restaurant #47 (the lessee) is a body corporate and at most, it can only be a business name.
12. The above view at paragraph 11, is supported by the tenant's exhibit SNK2 which is a certificate of registration of a business name, in the said certificate, County to County Choma Grill is registered in the name of Samson Njoroge Karoki. I note that County to County Choma Grill is a different business name from County 2 County Bar and Grill Restaurant but it does not negate the entity's standing from that of a business name.
13. I do not therefore agree with the Respondent that the tenant herein, Samson Njoroge Karoki is a stranger to the lease as I have found already that he signed the lease as the owner of the business name in the lease agreement.
14. Consequently, I do not find any merits in the Respondent's application dated 15.12.2022 and the same is hereby dismissed with costs to the tenant.

The Tenant's application dated 27.10.2022

15. The tenant has sworn an affidavit in support of his application and supplementary affidavit in response to the landlord's response.
16. The tenant has deponed that he is a tenant of the Respondent at the suit premises paying a monthly rent of Kshs. 300,000/=.



17. The tenant admits to rent arrears due to the effects of COVID 19, the 2022 elections and the state of the ailing economy and further depones that due to the rent arrears the Respondent has told him to vacate the suit premises.
18. The tenant has also deponed that he has invested heavily in the suit premises, that he is the sole bread winner of his family and he stands to suffer irreparable loss and damages unless the Respondent is restrained from her illegal activities.
19. The tenant in his supplementary affidavit has deponed that the Respondent has served him with a termination notice dated 28.9.2022 during the pendency of the instant proceedings.
20. The tenant's view is that the termination notice is contrary to the lease agreement between the parties as the termination notice should only be issued after the lease has expired.
21. The tenant who admits to being in rent arrears amounting to Kshs. 600,000/= depones that he is willing to pay the same together with the late payment penalty of 10%.
22. In his further affidavit sworn on 2.2.2023, the tenant denies being in rent arrears of Kshs. 2,276,135/= and disowns the document that the Respondent relies on to arrive at the said figure. The tenant, though, admits to being in rent arrears of Kshs. 600,000/=.
23. The tenant further depones that the parties have an arrangement wherein the tenant offers breakfast to the Respondent's guests and the same is to be offset from the rent, consequently the tenant depones that the landlady owes him Kshs. 211,234.02/= on account of breakfast meals and the rent outstanding is therefore Kshs. 388,766/= which debt the tenant continues to service diligently.
24. The tenant finally depones that he has never been served with the Respondent's notice to terminate dated 28.9.2022.

The Respondent's deposition in response to the Tenant's application

25. The Respondent has deponed in her replying affidavit that she entered into a lease agreement with an entity known as County to County Choma Grill Limited and pursuant to the said agreement, the tenant was to pay to the Respondent Kshs. 300,000/= per month.
26. The Respondent has further deponed that the said tenant is in arrears of rent amounting to Kshs. 2,276,135/= as at 15.9.2022 and the default continues.
27. The lessee has been informed of the rent arrears but has not paid the same leaving the Respondent with no choice but to issue the tenant with a notice to terminate tenancy dated 28.12.2022 (actually 28.9.2022).
28. The Respondent finally depones that in these circumstances, the tenant ought to be ordered to vacate the premises.

Analysis and determination

29. The only issue that arises for determination is whether the tenant is entitled to the orders sought in his application dated 27.10.2022.
30. The landlady/Respondent has stated that the tenant owes her rent in the sum of Kshs. 2,276,135/= whereas the tenant only admits to owing the landlady Kshs. 600,000/= but which he states has been reduced by the amount of Kshs. 211,234/= on account of meals provided to the Respondent's guests. From the outset, I must state that I have not seen any evidence of the arrangement that the tenant



would provide meals to the Respondent's guests and which would be subsequently recovered from the rent due. I do not find any substance in that claim and I dismiss the same.

31. The tenant has annexed a rent statement which accounts for his entire stay at the premises. The summary at exhibit SNK7 shows a balance of Kshs. 388,766/= after deducting shared costs of Kshs. 211,234/=.

The landlady/Respondent on her part has not annexed to her affidavit any statement of account. The only evidence produced by the Respondent is a letter from Frot Homes Managers and General Sales Agents, signed by one Evans Githii which at paragraph 2 thereof states as follows:-

“You are aware that the rent and service charges are in arrears in the sum of Kshs. 2,069,214/
= from the months of September 2020 to January 2021 plus a penalty fee of Kshs. 206,912/
= for the late payment making a total of Kshs. 2,276,135/=.”

32. The tenant's rent statement indicates that rent for September 2020 to January 2021 had been paid. It is not possible, without hearing evidence on this matter and further clarification from the parties, to determine with exactitude the amount of rent owing to the landlady. But be that as it may, the tenant has admitted being in rent arrears of Kshs. 600,000/=. Is he deserving of he equitable relief of injunction in the circumstances?

33. In the case of; Samuel Kipkorir Ng'eno & Another v Local Authorities Pension Trust (Registered Trustees) & Another [2013] eKLR, it was held;

“A tenant's first and main obligation is to pay rent as when it becomes due for the landlord has the right to an income from his investment, why should a tenant allow himself to fall in such huge arrears of rent.?”

In the same case, the court further held;

“The temporary injunction sought in the present application is an equitable remedy at the court's discretion. He who comes to equity must come with clean hands. A tenant who is in huge arrears of rent is undeserving of the court's discretion. The court cannot be the refuge of a tenant who fails to meet his principle, obligation of paying rent as and when it becomes due.”

Similarly, in the case of; Julius Mogaka Gekonde t/a Esmourt Technical College v Ouru Power Limited & Joseph O. Nyachoti t/a Minimax Auctioneers, the court held as follows:-

74. “I find that once the plaintiff has acknowledged that he is indeed in arrears of rent it means that he is in breach of the most critical term of their tenancy agreement, and being a defaulting party, he cannot be seen to approach the court for an order of injunction which is an equitable relief/remedy only available to parties who come to court with clean hands.

75. “I am not convinced that the Applicant/plaintiff has established that he has a prima facie case against the defendant with high chances of success due to his default of rent...”

34. whereas the tenant has stated that he is ready and willing to pay the rent arrears in installments, he has not in his pleadings given any concrete proposals and therefore the tribunal has none to go by.

35. I am guided by the above authorities and the tenant's own admission as to the default in rent payment to find that the tenant has not established a prima facie case for the grant of the orders of injunction sought in his application.



36. I have also seen the notice to terminate tenancy dated 28.9.2022. The proceedings herein have been commenced by way of a complaint under Section 12(4) of Cap 301. As such, it is only open to the tribunal to only determine the complaint arising as such and if the landlord as desirous of enforcing the notice dated 28.9.2022, she is free to do so under separate proceedings. As it were, the landlady has no application pending before the Tribunal for determination.

Final disposition

37. In the circumstances, I make the following orders:-

- (a) The tenant's application dated 27.10.2022 is dismissed with costs to the Respondent.
- (b) The Respondent's application dated 15.12.2022 is dismissed with costs to the tenant.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF APRIL 2023.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

6.04.2023

Delivered in the absence of the parties.

