



**Kamakia v Kariuki (Tribunal Case E607 of 2024)
[2024] KEBPRT 1561 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1561 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E607 OF 2024
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
OCTOBER 17, 2024**

BETWEEN

SIMON NDIRANGU KAMAKIA APPLICANT

AND

JOHN NDIRANGU KARIUKI RESPONDENT

RULING

1. This Ruling is on the Tenant/Applicants application dated 27th May 2024. The same sought for the following reliefs,
 - i. Spent
 - ii. That this Honourable Tribunal to order the Respondent/Landlord to forthwith re-open the Applicants business premise's situate on L. R NO. 97/265 Fedha Estate along outer-ring Road Nairobi and accord the Tenant peaceful and quiet use of the premises pending the hearing and determination of this Application.
 - iii. That this Honourable Tribunal to issue Temporary orders of injunction restraining the Respondent either by himself, his agents or any other persons acting on his behalf from harassing, intimidating, or in any manner interfering with the Tenant's occupation of the premises pending the hearing and determination of this application.
 - iv. That this Honourable tribunal to issue temporary orders of injunction restraining the Respondent either by himself, his agents or any other person acting on his behalf from harassing, intimidating, or in any manner interfering with the Tenant's occupation of the premises pending the hearing and determination of this reference.
 - v. That the OCS Embakasi Police Station to enforce compliance with these orders.
 - vi. That costs of this application be provided for.



2. The Tenant's notice of motion aforesaid was founded on the reference dated 27/5/2024. The same complained of the following about the landlord:-
 - a. He unilaterally and without reason locked up the premises hence denied the Tenant access to the same.
 - b. The Tenant has no pending rent arrears and therefore the closure of the business is unwarranted.
 - c. The Tenant has heavily invested on the premises and its illegal closure is clear eviction in disguise.
3. The Tenant was granted the orders dated the 29th May 2024 in terms of prayers 2, 3 and 5 on the face of the application and the same provoked the landlord's Replying Affidavit sworn on the 4th July 2024 and the Notice of motion application of the even date. The said motion sought for the following reliefs:-
 - i. Spent
 - ii. That the ex parte orders of the 29th May 2024 and the resultant orders be set aside and the Landlord/Respondent and the Application, Reference/ complaint be heard on merits.
 - iii. That the costs of the application be provided for.
4. At this point we observe that the prayers by the Landlord in the application dated 4th July 2024 are confusing in that the Tenant's application dated 27th May 2024 and the Reference thereof were to be obviously to be heard on their merits before final determinations thereof. We find it not very innovative to move the court to hear an application to set aside interim orders instead of attacking such orders within the parent application.
5. However, as that may, the parties by consent agreed to hear both applications together. The landlord's application and replying affidavit both dated 4th July 2024 were to be treated as the responses to the Tenant's application dated 27th May 2024.
6. We have also perused the Tenant's submissions dated 22nd August 2024 and those of the landlord dated 7th August 2024. We have also taken due cognizance to the case law ably cited by both parties. From the above, it is our view that the issues to determine the matters before us are the following:-
 - A. Whether the Tenant's and Landlord's applications dated 27th May 2024 and 4th July 2024 respectively have merit.
 - B. Who should bear the costs of these proceedings.
7. On the 1st issue, there is no dispute that there exists a controlled tenancy between the parties as envisaged under Section 2 (1) of the *Landlord and Tenant (shops, Hotels and Catering Establishments) Act*.
8. It is also not in contest that the Landlord did lockdown or close the Tenant's occupied premises situate on land reference No. 97/365 Fedha Estate in Nairobi. The action of the landlord is unknown to the law when looked against Section 4(2) of the Act.
9. The same provides that:-

4(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".



10. Though the landlord asserts that they had entered into an oral agreement with the Tenant to give up possession in case of default on rent payment, the Tenant has denounced the same and sought the protection of this court. In case of there being nothing tangible on the part of the Landlord to support the alleged oral agreement with the Tenant to voluntarily vacate, the demised premises, this court would find guidance and reliance on the law which is the Act herein.
11. The action of the Landlord to lockout the Tenant is unknown to the law. It then follows that the Tenant had the foundation to approach this court for the requisite interventions.
12. If the Landlord had wanted to take back the demised premises, the legal infrastructure to effect the same is very elaborate. The same case applies in the event that a Tenant has fallen back on payment of rent. We therefore determine that the Tenant's application dated 27th May 2024 has merit and that the interim orders granted on the 29/5/2024 were founded in law and are merited and we proceed to confirm the same.
13. On the other hand, we do not find any merit on the landlord's application dated 4th July 2024. There can never be a justification of interfering with a controlled tenancy without strict and complete compliance with the Act. In this we rely on the case of LALL -vs- JEYPEE INVESTMENTS LTD HCCA NO. 120 of 1971 (1972) EA 512 where the court held that:-
14. "The *landlord and Tenant (Shops, Hotels and Catering establishments) Act* (Cap.301) is an especially enacted piece of legislation which creates a privileged class of tenants for the purpose of affording them the protection specified by its provisions against ravages of predatory landlords. Such protection can only be fully enjoyed if the provisions of the Act are observed to the letter otherwise the clearly indicated intention of the legislature would be defeated. In order to be effective in this fashion the Act must be construed strictly no matter how harsh the result.... The landlord and Tenant Act laid down a code which parliament intended to be followed and if a landlord does not give notice of termination as prescribed, the notice will be ineffectual. This may seem a technical and unmeritorious defence, but there is no doubt that the court has no power to dispense with these time limits if the defendant chooses to object at the proper time. This is an Act which requires, in so far as the giving of the notice is concerned, absolute and complete not merely substantive compliance with its peremptory provisions".
15. Having found for the Tenant and against the Landlord, we further award the costs of these proceedings to the Tenant as guided by the provisions of Section 27 of the *Civil Procedure Act* and the proviso thereof.
16. In conclusion, it is our finding that with this Ruling nothing will be left of the reference dated 27th May 2024 and the same will be allowed in the same terms with this application. The final orders that therefore commend to us are the following:-
 - i. That the Tenant's reference and notice of motion application both dated 27th May 2024 are allowed in terms that he shall be allowed quiet possession of the demised premises situate within Title L.R No. 97/365 Fedha Estate Nairobi.
 - ii. That the Tenant shall settle all the rents in arrears if at all in the next 30 days of the date hereof and in the case of any dispute on the quantum of such rent, either party to move this court appropriately.
 - iii. That the Tenant is awarded costs assessed at Kshs.30,000/- to be offset from the rents payable to the landlord.

Those are the orders of the court.



RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF OCTOBER, 2024.

HON. NDEGWA WAHOME MBS, HON. JOYCE MURIGI, - PANEL CHAIRPERSON, MEMBER, BUSINESS PREMISES RENT TRIBUNAL BPRT

17/10/2024

Ruling delivered in the presence of Mr. Nyangena for the Landlord and Mr. Ongeru for the Tenant.

