



**Wanaina v Salimin & another (Tribunal Case E260 of 2023)  
[2024] KEBPRT 439 (KLR) (9 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 439 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E260 OF 2023  
P MAY, MEMBER  
APRIL 9, 2024**

**BETWEEN**

**LUCAS K. WANAINA ..... TENANT**

**AND**

**FATUMA ABDALLA SALIMIN ..... 1<sup>ST</sup> LANDLORD**

**SAIDA SALIMIN ..... 2<sup>ND</sup> LANDLORD**

**RULING**

1. The tenant approached the Tribunal by filing the reference dated 16/10/2023 seeking for a plethora of orders against the respondents. Contemporaneous with the reference, the tenant filed an application under certificate on an even date. The tenant sought the intervention of the Tribunal to have the demised premises reopened and for the landlords to cease any action calculated towards harassing the tenant.
2. The application was premised on the grounds set out on the face of the application and the supporting affidavit sworn by the tenant. The tenant stated that he leased the demised premises in 2013 from one Salim Abdallah Batesh (now deceased) who was the proprietor and a relative to the respondents. He stated that he built the demised premises after being granted consent by the deceased.
3. He stated that he was granted consent to sublet the demised premises to a third party sometimes in September, 2023. He further averred that he was issued with a notice to terminate tenancy by the 1<sup>st</sup> Respondent and that the said 1<sup>st</sup> respondent had superimposed a padlock hence denying them access to the premises.
4. The application was placed before the Tribunal on 25<sup>th</sup> October, 2023 whereby the tenant was granted interim orders pending inter- partes hearing. The tenant was directed to serve the application upon the respondents.



5. The respondents responded jointly to the application by filing the Replying affidavit sworn by the 1<sup>st</sup> Respondent on 6<sup>th</sup> November, 2023. The respondents took a multi-pronged approach in attacking the application which they described to be malicious and full of falsehoods. The respondents stated that they did not consent to the sub letting of the demised premises to Chania Genesis.
6. The respondents accused the Tenant of failing to honour his obligation of paying rent as when it fell due and had accrued arrears to the tune of Kshs. 154,000./ They therefore accused the tenant of attempting to sub let the premises while they were in arrears. The respondents filed a statement of account which indicated the rent arrears as Kshs. 165,480 as at December, 2023.
7. The parties were directed to canvass the application by way of written submissions whereby each of the parties has filed their respective submissions. I have considered the same and would proceed as follows:
8. A perusal of the pleadings filed by the parties reveal that the dispute now revolves around the question of rent arrears. The tenant had denied to be in any rent arrears but had after the landlord filed their statement of accounts they begrudgingly admitted to being in arrears but disputed the amount owed. He has maintained that the correct amount owed is Kshs. 33,000 and not the figures provided by the landlord.
9. The issue of payment of rent is a fundamental obligation in a tenancy relationship. The parties have a duty to ensure that the records on payment of rent are adequately provided. In the present proceedings it is astounding that the tenant has scanty proof of payment of rent. The tenant has further failed to attach any documentation of the consent granted to allow for subletting of the demised premises.
10. The tenant's duty to pay rent is cardinal and forms the cornerstone of the tenancy relationship. In the case of Samuel Kipkorir Ngeno And Another –versus- Local Authorities Pension Trust (Registered Trustees) And Another (2013) eKLR it was held that;
 

“A tenant first and main obligation is to pay rent as and when it becomes due for the landlord has the right to an income from his investment. Why would a tenant allow himself to fall into such huge arrears of rent?

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 in in huge arrears is underserving of the courts discretion. The court cannot be the refuge of a tenant who fails to meet his principal obligations of paying rent as and when it becomes due.”
11. In view of the foregoing, it is explicit that the tenant has failed to discharge their duty of proving payment of rent as per section 107 of the Evidence Act. The Tribunal is constrained to dismiss the application and the reference.
12. In the end, the following orders commend itself:
  - a. The notice of motion dated 16/10/2023 and reference dated on an even date are hereby dismissed with no orders as to costs.
  - b. The tenant to pay the outstanding rent arrears of Kshs. 165,480 and any other amounts accumulated during the pendency of the present proceedings and file proof of payment within 30 days from the date herein. In default the landlord shall be at liberty to levy distress without any reference to the Tribunal.



- c. The tenant shall not sublet any part of the demised premises without the respondents' express written consent.
- d. Reference settled in those terms.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF APRIL, 2024.**

**HON. PATRICIA MAY - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**In the presence of;**

The Tenant present in person

1<sup>st</sup> Landlord/Respondent present in person

