



**Ciera v Muchiri & another (Tribunal Case E373 of 2024)
[2024] KEBPRT 963 (KLR) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 963 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E373 OF 2024
CN MUGAMBI, CHAIR
JUNE 28, 2024**

BETWEEN

BILLY NGUGI CIERA TENANT

AND

MICHAEL MUCHIRI LANDLORD

AND

WRIGHT AUCTIONEERS AUCTIONEER

RULING

Introduction

1. The Tenant's Application dated 19.03.2024 seeks an order that the Landlord be restrained from evicting and attaching the Tenant's property pending the hearing and determination of the case.

The Tenant's depositions

2. The Tenant's affidavit in support of his Application may be summarized as follows:-
 - a. That on 29.02.2024, the 1st Respondent sent the 2nd Respondent to the Tenant's premises to value the said premises for attachment.
 - b. That the attachment and eviction of the Tenant is illegal as the Tenant is not in any rent arrears.
 - c. That the Tenant has made substantial improvements in the premises which the Landlord now wants to occupy without compensating the Tenant.
 - d. That on 15.03.2024, the 2nd Respondent visited the suit premises, with an intention to seize the Tenant's property.
 - e. that the Tenant is a protected Tenant.



The Landlord's depositions

3. The replying affidavit sworn by the 1st Respondent/Landlord on 05.04.2024 may be summarized as follows:-
 - a. That the Applicant has been the Respondents Tenant for a period of about eight (8) years and owes the Respondents rent of Kshs. 76,300/= and Kshs. 195,000/= for a dwelling house and the business premises respectively.
 - b. That the Respondent wants the Tenant to pay the rent arrears and leave the suit premises immediately.

The Tenant's Further Affidavit

4. The Tenant's further affidavit sworn on (undated) may be summarized as follows:-
 - a. That there was a mutual agreement between the Tenant and the 1st Respondent that the rent arrears agreed between the parties would be offset against the improvements the Tenant had done on the premises which amounted to Kshs. 550,000/= and the 1st Respondent would give the Tenant the balance of Kshs. 278,000/=.
 - b. That the Landlord consented to the Tenant developing part of the premises with the Tenant paying an extra Kshs. 15,000/= per month for the space where he had developed stores and shops. The developments would revert to the Landlord once the tenancy between the parties terminated.
 - c. That the Landlord has not made any claim for the rent allegedly owed till now that he wants to evict the Tenant and take control of the suit premises.

Analysis and determination

5. The only issue that arises for determination is whether the Applicant is entitled to the orders sought in his Application under consideration.
6. The Tenant has annexed to his affidavit a letter from M/S Ngotho Waweru & Company Advocates dated 12.03.2024 where the Advocates have stated that on 28.02.2024, the Landlord sent M/S Wright Auctioneers to take account of the Tenant's properties. This is the only evidence of a threat I have come across in the documents filed by the Tenant. There is no proclamation as yet as none has been brought to the attention of the Tribunal.
7. The Landlord has in his affidavit deposed that the Tenant owes him rent for the business premises the Tenant occupies in the sum of Kshs. 195,000/=. I do note that this rent was owed as at 30.12.2017 and the Landlord has not raised any issue with rent payments for the subsequent years. It is actually on the basis of this claim arising in the year 2017 that the Landlord implores the Tribunal to order the Tenant to pay the same and to also vacate the premises. No reason has been given by the Landlord why he has been quiet until 2024 to bring up this claim.
8. The Tenant has explained in an affidavit that they had agreed with the Landlord that he would develop the suit premises and the Tenant would recover the cost of developments by offsetting the rent owed to the Landlord.

According to the Tenant, he carried out developments amounting to Kshs. 550,000/= and a deduction of the cost of developments would have the Landlord owing the Tenant Kshs. 278,700/=. The Tenant



has also stated that he further constructed other structures and for which he pays an extra Kshs. 15,000/= per month, these developments will revert to the Landlord at the termination of the tenancy.

9. The issue of the value of the developments and whether or not they can be tied to the rent payable and more particularly whether the rent admitted to be owed around the year 2017 can be offset by the value of the developments is an issue that can only be determined during a hearing. The fact that it has taken the Landlord all these years to raise the issue of that particular rent lends credence to the Tenant's position that the same was to be offset against the cost of the developments.
10. The Landlord has asked the Tribunal to order the Tenant to pay the rent arrears and vacate the premises. The tenancy between the parties herein being a controlled tenancy, the Landlord is obligated to comply with the provisions of Section 4 of [Cap 301](#) if he is desirous of terminating the tenancy.

The Landlord having not sought to terminate the tenancy cannot obtain any eviction orders against the Tenant.

11. Consequently, I do find merit in the Tenant's Application and hereby allow the same as prayed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF JUNE, 2024

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of:-

Mr. Were holding brief for Mr. Wachakana for the 1st Respondent

Mr. Ngotho for the Applicant

