



**Hand In Hand Eastern Africa v Scenic Link Investments Limited & another
(Tribunal Case E412 of 2024) [2024] KEBPRT 1115 (KLR) (16 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1115 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E412 OF 2024
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
JULY 16, 2024**

BETWEEN

HAND IN HAND EASTERN AFRICA APPLICANT

AND

SCENIC LINK INVESTMENTS LIMITED 1ST RESPONDENT

EDWARD KIARIE 2ND RESPONDENT

RULING

1. The Tenant/Applicant originated these proceedings by the Reference dated 26th March 2024. The same was anchored on Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) (Cap. 301) herein after the Act”.

The same is on the grounds that:-

The landlord unlawfully closed the Tenant’s offices on the 10th February, 2024”.

2. The reference was filed with a Notice of motion Application dated 2nd April 2024. The same in principal sought for orders that the landlord be compelled to re-open the Tenant’s offices closed/locked on the 19th March 2024. It further prayed that the landlord be restrained from interfering with the Tenant’s quiet possession of the demised premises.
3. It is the case of the Tenant that he has only fallen into rent arrears as the landlord has failed to supply it with an e Tims (electronic tax invoice system) to enable it comply with the law and in particular Section 16 (1) of the [income Tax Act](#) as amended by the Finance Act of 2023.
4. To the Tenant, this compliance is bidding on both the Tenant and the landlord and that no reason had been shown by the landlord for non-compliance. The Tenant further grieved that the act of locking up his offices was not sanctioned by the law and thus illegal.



5. On their part, the 1st Respondent who is a management firm contracted by the 2nd Respondent to manage the demised premises swore an Affidavit dated 2nd May 2024 through its manager one Joshua John. He asserted that the lease agreement dated 19th February 2019 and renewed on the 2023 had been breached by the Tenant.
6. It was his case that the Tenant had no reason whatsoever not to pay rent on time and that the Respondents were entitled to closedown the demised premises in the event of the Tenant not paying rent on time. That for the premises to be re-opened once locked, the Tenant required to pay all the rents in arrears together with applicable penalties.
7. In support of this assertion, the 1st Respondent and the 2nd Respondent invoked the provisions of clause 7 and 6 of the lease agreements dated 19th March 2019 and 1st March 2023 respectively.
8. On his part, the 2nd Respondent one Edward Kiarie swore his Affidavit dated 15th April 2024. He reiterated the 1st respondents evidence and added that the Tenant should be compelled to pay rents of four (4) months that was in arrears or in the alternative he be permitted to levy distress in recovery of the same.
9. By consent of the parties directions were taken on the 2nd May 2024 to the effect that the application herein be canvassed by way of written submissions. The Tenant filed its submissions dated 22nd May 2024 whereas those for the respondents are dated the 10th June 2024.
10. We have considered the pleadings by the parties including their respective submissions and in our view, the issues for determination in this matter are the following:-
 - A. Whether the Tenant's application is merited.
 - B. Who should bear the costs of this suit.
11. At this juncture, we are persuaded that from the complaint in the reference dated 26th March 2024 and the prayers in the application dated 2nd April 2024, a determination on the later will resolve the issues in the said reference. The reference will therefore be construed as settled in the same terms with the application.

ISSUE NO. A- Whether the Tenant's Application is merited.

12. The Tenant's simple contention in this matter is that the landlord should facilitate him to pay rent within the law and in particular Section 16(1) of the *income Tax Act* as amended by the Finance Act, 2023. The Tenant merely requires the Landlord to provide electronic Tax invoice management System or e-Tims.
13. We note that despite the letters by the Tenant dated the 10th January 2024 and the 19th March 2024 requesting to be provided with e-Tims and the Tenant's assertion and averments in its application and other pleadings, the landlord has been completely indifferent on the issue and has not addressed the same in anyway.
14. The request by the Tenant is pursuant to the law and the landlord has not expressed any difficulty in complying with the same to facilitate ease of payment of rent and to allow the Tenant deliver himself



within the governance of the Tax Authority in the country which is the Kenya Revenue Authority. The said Section 16(1) of the [income Tax Act](#) as amended by the Finance Act, 2023 provides that:-

“Any expenditure or loss where the invoices of the transactions are not generated from an electronic tax invoice management system are unlawful except where the transactions have been exempted in accordance with the Tax Procedure Act, 2015”.

15. We therefore find that on that particular limb, that the Tenant’s application has succeeded. It is the landlord’s sole fault of failure to comply with the law on its part that derailed the tenants rent payment regime as is ably demonstrated from the evidence on record.
16. The Tenant also pleaded that the Landlord had no authority to lockdown its premises. The landlord on the other hand asserted that the lockdown was authorized by the parties respective leased agreements dated 19th February 2019 and 1st March 2023 and in particular Clauses 7 and 6 respectively.
17. We however decline the invitation that such clauses can be applicable in a controlled tenancy as envisaged by Section 2(1) of the Act. Any interference on the Tenant’s quiet possession of a demised premises must strictly be in compliance with Cap. 301. The Act does not in anyway imagine the lockdown of premises in a controlled tenancy without recourse to this court.
18. Indeed Section 3(6) of the Act outlaws any agreement that purports to outlaw the operations of this Act. It provides that:-

“Any Agreement relating to, or condition in, a controlled tenancy shall be void in so far as it purports to preclude the operation of this Act”.
19. It is our determination therefore that if the landlord had taken due regard of this Act, he could not have locked down the Tenants premises. The 2nd limb on which this application is founded therefore also succeeds. In the wholesome, we are persuaded that the Applicant’s application has merit and we shall allow the same. The reference dated 26th March 2014 is also allowed in the same terms.

ISSUE NO. B- Who should bear the costs of this suit.

20. The proviso to Section 27 of the [Civil Procedure Act](#) provides that:-

“Provided that the cost of any action, cause or other matter or issue shall follow the event unless the court or Judge shall for good reason otherwise order”.
21. We do not find any justification to deny the Tenant costs especially when taking cognizance of the letters dated 10th January 2024 and 19th March 2024 coupled with the unwarranted locking of the Tenant’s offices. We shall therefore award costs of the suit to the Tenant.
22. For clarity, the landlord shall with immediate effect and in any event before any further rent is paid to him or to his agents always provide the Tenant with an electronic Tax invoice management system (e-Tims). Further is that the Tenant shall pay the next rent due less the amount equivalent to the days that its offices were locked.
23. In the final analysis, the orders that commend to us are the following:-
 - i. That both the reference and application dated 26th March 2024 and 2nd April 2024 respectively are allowed in terms that the Tenant shall be allowed quiet possession of the demised premises.



- ii. That the landlord shall immediately and in any event before any further rent is paid to him by the Tenant provide an electronic Tax invoice management system (e-Tims).
- iii. That on being facilitated in No. 2 above, the Tenant shall pay the rents as they fall due but shall deduct an amount equivalent to the days the demised premises were locked by the landlord.
- iv. That the landlord shall pay costs to the Tenant assessed at Kshs.20,000/- to be offset from rent payable.

Those are the orders of the court.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF JULY, 2024.

HON. NDEGWA WAHOME.....PANEL CHAIRPERSON

MBS HON. JOYCE MURIGI.....MEMBER

BUSINESS PREMISES RENT TRIBUNAL BPRT

18TH JUNE, 2024

Ruling delivered in the presence of Mr. Kihara for the Tenant/Applicant and Mr. Maina for the Landlord/Respondent.

HON. NDEGWA WAHOME.....PANEL CHAIRPERSON

MBS HON. JOYCE MURIGI.....MEMBER

BUSINESS PREMISES RENT TRIBUNAL BPRT

16TH JULY, 2024

