



**Misiko v Dzillah (Tribunal Case E316 of 2023)
[2024] KEBPRT 685 (KLR) (22 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 685 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E316 OF 2023
N WAHOME, MEMBER
APRIL 22, 2024**

BETWEEN

BONFACE MISIKO APPLICANT

AND

WILSON DZILLAH RESPONDENT

RULING

1. The Tenant/Applicant originated these proceedings by the Reference dated 13.12.2023. He sought for the intervention of this court to have the Landlord compelled to allow him access to the demised premises, restore water and electricity and compensate him for having unlawfully locked up his premises.
2. Accompanying the Reference was an Application of even date founded on a certificate of urgency and supported by an affidavit of the Applicant. The Applicant replicated the prayers in the Reference.
3. On being served with the Applicant's pleadings, the Respondent filed the Replying affidavit sworn on the 18.01.2024. To close the pleadings, the Applicant filed the supplementary affidavit sworn on the 25.1.2024. The parties thereafter and in particular on the 5.2.2024 consented to canvas the Application by way of written submissions.
4. The Applicant's submissions are dated the 14.2.2024 whereas those of the Respondent are dated 27.2.2024. From all the materials placed before me, I will summarize the evidence of both parties.

A: Tenant's Evidence

- i. He was a Tenant of the Respondent having assumed the same from one Joel Amayi.



- ii. He entered into a lease agreement with the Respondent in the presence of the former Tenant and other witnesses and paid Kshs. 1,000/= for the Agreement which was however taken away by the Respondent.
- iii. On assuming the tenancy, he paid two months' rent in advance and a further deposit equivalent to two months' rent.
- iv. He also bought goodwill on the premises from Joel Amayi with the knowledge and consent of the Respondent.
- v. He Barely operated the business for 2 weeks after investing heavily on it before the Respondent stormed the same and locked it up.
- vi. He therefore needed the intervention of this court so that he could enjoy quiet possession and also be compensated for the 51 days that the premises were locked up. He also sought for costs.

B: Evidence of the Landlord

- i. He denied that the Applicant was his Tenant and further denied receiving Kshs. 40,000/= from him.
 - ii. The Applicant wanted to lease out the premises but he declined as he wanted same to be used for other business other than as a wines and spirits bar.
 - iii. At a meeting held on 30.11.2023, the Applicant had agreed to vacate from the demised premises only to decline thereafter.
 - iv. He had never entered into any lease agreement with the Applicant.
5. Having perused the materials placed before me including the submissions by the parties, in my view, the issues for determination in this matter are the following:-
- A: Whether there exists a Tenant/Landlord relationship between the parties.
- B: Whether the Applicants application is merited.
- C: Who should bear the costs of this Application.
- Issue No. A: Whether there exists a Tenancy/Landlord relationship between the parties.
6. It is not in dispute that the Applicant is in quiet possession of the premises. Indeed both parties are in agreement that as at 30.11.2023 the Applicant was still in such occupation. What is in dispute is whether the Applicant had agreed to vacate the same as alleged by the Landlord. On his part, the Applicant claims that in the only meeting he had with the Respondent, they entered into a lease agreement for the demised premises. It is the word of the Applicant against that of the Respondent.
 7. However, from materials placed before me, I am persuaded that the Applicant indeed paid Kshs. 20,000/= to the Respondent being rent for the months of November and December, 2023. That he also paid a further Kshs. 20,000/= being deposit for rent security.
 8. The Respondent has not denied that paybill Account No. xxxx belongs to him. I also note that the payment of Kshs. 40,000/= is clear. On the first payment, the Applicant was left with a balance of Kshs. 22,377.57/= and on the second payment of Kshs. 20,000/= he was left with a balance of Kshs. 377.57/=.



9. I also highly doubt that the Applicant would have committed the payment of Kshs. 250,000/= as goodwill for the premises and further funds for refurbishment of the premises without the consent of the Landlord. In any event, it is inexplicable that the Applicant would take possession of the premises and conduct operations for a whole month without the concurrence of the Respondent.
10. In all, I find the conduct of the parties in relationship to each other to be that of a Landlord and Tenant as envisaged under Section 2(1) of the Act. That relationship does not require to be reduced into writing. The Section provides that;-
- “Controlled tenancy means a tenancy of a shop, Hotel or Catering Establishment-
- a. Which has not been reduced into writing; or
 - b. Which has been reduced into writing and which-
 - i. Is for a period not exceeding five years; or
 - ii. Contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof.”
11. This therefore puts the relationship of the parties into the context as envisaged under the Act and within the jurisdiction of this court. Once a controlled tenancy is established, the same can only be terminated or the terms thereof altered in complete compliance with the law.
12. The law would require compliance with Section 4(2) of the act which provides that;-
- “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.”
13. Section 4(4) of the Act is also in application but will refer to Section 7 of the act which provides that;-
- “The Landlord must provide grounds for which he seeks to terminate a tenancy.”
- Those grounds are elaborated under Section 7(1)(a)-(g) of the Act.
14. Regulation 4(1) of the Act also provides that the termination must be in a particular prescribed form which must be complied with. It provides that;-
- “A notice under Section 4(2) of the Act by a landlord shall be in form A in the schedule to these Regulations.”
15. The upshot of all these is that the Landlord had no authority to purport to terminate the tenancy herein without employing the due process of the law and his actions were in stark conflict with Cap 301.

Issue No. B: Whether the Applicant's Application is merited

16. The Respondent has not denied locking up the demised premises for 51 days and disconnecting water and electricity from the demised premises to induce eviction of the Applicant. The Applicant was therefore within his rights to approach this court for intervention.
17. The orders sought by the Applicant fall within the realm of injunctions and am alive to the pre-requisites to be satisfied in the grant of such reliefs as ably laid down in the locus classicus case of; *Giella vs Cassman Brown* [1973] EA 358 and am persuaded that a clear prima facie case is established



by the Applicant. Further if the fundamental rights of the Applicant are breached, there can never be sufficient compensation for the same and finally the balance of convenience is in favour of the Applicant. Reason being that he would suffer more if the orders sought are not granted than the Landlord would suffer if at all the orders are granted.

18. I would therefore allow the Application pending the hearing and determination of the Reference herein. From the conflicting positions taken by the parties, oral evidence would suffice to help this court do substantive justice to the parties.

Issue No. C: Who should bear the costs of the Application

19. It is my view that the costs of the Application will abide the outcome of the Reference.

20. In the final analysis, the orders that commend to me are as follows;-

- i. That the Applicant shall enjoy quiet possession of the demised premises pending the hearing and determination of the Reference herein.
- ii. That the Tenant shall pay all the rents in arrears except for the fifty one (51) days when the business was not operational and continue to pay the same as they fall due.
- iii. That the costs of this Application shall abide in the outcome of the Reference.

Those are the orders of the court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF APRIL, 2024.

HON. NDEGWA WAHOME, MBS

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the absence of the parties and the court to notify the parties accordingly.

