



**Advent Medicare and Maternity Centre v Nyakundi & another (Tribunal  
Case E023 of 2024) [2024] KEBPRT 1188 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1188 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E023 OF 2024  
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER  
JULY 15, 2024**

**BETWEEN**

**ADVENT MEDICARE AND MATERNITY CENTRE ..... APPLICANT**

**AND**

**NYAKUNDI JOYCE (SUED AS THE ADMINISTRATOR OF THE ESTATE OF  
SHADY FRANCIS NYAKUNDI ..... LANDLADY**

**AND**

**MOCCO AUCTIONEERS ..... AUCTIONEER**

**RULING**

**A. Dispute Background**

1. The tenant/applicant moved this Tribunal vide a Reference under Section 12(4) of the [\*Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act\*](#) Cap 301 dated 9<sup>th</sup> February 2024 with a Complaint that the landlord unlawfully and illegally proclaimed the tenant's tools of trade and issued illegal notices contrary to [Cap 301](#) Laws of Kenya.
2. The tenant filed a notice of motion under a certificate of urgency dated 9<sup>th</sup> February 2024 wherein it seeks for the following orders; -
  - i. That the application be certified urgent.
  - ii. That the respondents be restrained from levying distress and or removing the proclaimed goods from the tenant's premises.
  - iii. That the respondents be prohibited from unlawfully harassing /evicting or in any manner interfering with the tenant's quiet occupation of the suit premises at Njoro/Ngata Block 1/1341.



- iv. That the O.C.S Nakuru Central Police Station assists in compliance of the orders.
  - v. That the costs of the application be provided for.
3. The application is supported by an affidavit of even date in which the tenant deposes as follows; -
- i. That the tenant carries out a hospital business within the suit premises pursuant to a lease agreement dated 17<sup>th</sup> April 2019 entered into between it and the late Shaddy Francis Nyakundi. A copy of the lease agreement is annexed as “ONP-1”.
  - ii. That the tenants have promptly paid monthly rent to the 1<sup>st</sup> respondent in time save from last year when the tenant experienced financial problems due to ongoing auditing process at the National Health and Insurance Fund (NHIF) that owes the tenant over KES. 3,330,132.
  - iii. That the tenant owes the landlord KES. 590,000 in rent arrears and not KES. 1,314,000 as stated in the proclamation notice and are willing to settle the same in monthly installments of KES. 50,000 together with monthly rent until payment in full. Copies of the proclamation notice dated 5<sup>th</sup> February 2024, auctioneers fee note and letter of instruction to the 2<sup>nd</sup> respondent are annexed as “ONP-2 a,b, and c”.
4. On 14<sup>th</sup> February 2024, the court issued interim orders of injunction against the respondents pending hearing of the application inter-partes.
5. The application is opposed vide a replying affidavit dated 1<sup>st</sup> March 2024 in which the landlady deposes as follows; -
- i. That under the tenancy agreement between the parties dated 17<sup>th</sup> April 2019, the tenant was required to pay monthly rent of KES. 90,000 for 6 months on signing of the lease and thereafter rent was to be payable quarterly in advance or on the 5<sup>th</sup> day of each quarter in a cumulative sum of KES. 270,000.
  - ii. That the tenant started to default on payment of rent in 2022, an issue that has subsisted to date.
  - iii. That the tenant owes KES. 1,459,000 in rent arrears, in addition to the collection fees of KES. 145,900. A schedule of payment confirmation messages is annexed as “NJ-2”.
  - iv. That it is untrue that the facility is experiencing financial challenges as the applicant opened another medical facility in the area which is operational while at the same time defaulting on rent owed to the landlord. That there is a signpost in the area with the mobile number of one of the directors of the applicant. A picture of the signpost with the number of the director is annexed as “NJ-3”.
  - v. That contrary to the averments by the applicant, the applicant was given a notice of the default back in December 2023 but the applicant did not honor it.
6. The tenant/applicant filed a further affidavit dated 1<sup>st</sup> July 2024 wherein he deposes as follows; -
- i. That at the time of filing of the application and reference, the tenant owed the landlady a sum of KES. 590,000 in rent arrears and not KES. 1,459,000 as alleged in the replying affidavit.
  - ii. That during the course of these proceedings, the tenant/applicant has made payments towards the rent arrears to the 1<sup>st</sup> respondent which has been broken down to the tune of KES. 975,000. Copies of the tenant’s bank statements evidencing payments are annexed as “ONP-1 and 2”



- iii. That the expected rent for the month of January up to June 2024 was KES. 540,000 and therefore all payments that were over and above in the sum of KES. 435,000 went towards rent arrears.
  - iv. That upon deduction of KES. 435,000 from KES. 590,000 being the admitted rent arrears, the tenant now owes the landlady KES. 155,000 as arrears which it undertook to offset in one months' time from the date of the affidavit.
  - v. That the tenant wishes to confirm his keenness to settle the arrears.
  - vi. That there are patients currently admitted at the facility and unless the orders sought in the application are allowed, the applicant shall suffer irreparably.
7. The court directed that the matter be dispensed of by means of written submissions and both parties complied. The tenant filed its written submissions dated 25<sup>th</sup> April 2024 and the landlady filed hers dated 12<sup>th</sup> June 2024. We shall consider both submissions as we deal with the issues for determination.

#### **B. Issues for determination**

8. The following are the issues for determination; -
- a. Whether the tenant/applicant is entitled to the orders sought in the application dated 9<sup>th</sup> February 2024.
  - b. Who shall bear the costs of the application?

#### **Issue (a) Whether the tenant/applicant is entitled to the orders sought in the application dated 9<sup>th</sup> February 2024.**

- 9. The tenant approached this tribunal seeking for orders to restrain the respondents from levying distress against it and from interfering with its quiet occupation of the suit premises.
- 10. It is not in dispute that the tenant owes the landlady rent as it admits the same in the filed affidavits as well as in its written submissions.
- 11. According to the parties herein, the contention in this matter is the amount of rent owing to the landlady/1<sup>st</sup> respondent. The landlady claims that the tenant owes her a sum of KES. 1,459,000 being unpaid rent in addition to the collection fees of KES. 145,900 while the tenant claims that it owed the landlady a sum of KES. 590,000 in rent arrears and was willing to settle the same in monthly installments of KES. 50,000 until payment in full.
- 12. We note that the landlady has annexed a summary of rent payments from the year 2022 up to February 2024 while the tenant has indicated its payments for January 2024 to June 2024. This tribunal is therefore unable to determine the amount of rent arrears owing to the landlady.
- 13. In examining whether the orders sought by the Tenant/Applicant are merited, this tribunal shall rely on the locus classicus case of *Giella v Cassman Brown & Company Limited* (1973) E A 358 where the court expressed itself on the conditions that a party must satisfy for the grant of an interlocutory injunction as follows: -

“Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of



damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”

14. Upon analyzing the documents filed in this matter, we find that the tenant/applicant has demonstrated payment of part of the rent arrears owed to the landlord by way of bank statements annexed to its further affidavit and being a hospital facility that currently has both out-patients and in-patients, this tribunal shall order that the *status quo* be maintained and parties file and exchange rent account statements together with evidence of rent payment for the disputed period of 2022 to 2024.

**Issue (b) Who shall bear the costs of the application?**

15. As regards costs, the same are in the Tribunal’s discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall order that costs of the application shall abide the outcome of the hearing.

**C. Orders**

16. In conclusion, the following final orders commend to us; -
- a. The application dated 9<sup>th</sup> February 2024 is allowed in terms of prayer 2 thereof pending hearing.
  - b. Parties shall file and exchange rent account statements together with evidence of rent payment for the disputed period within the next 14 days hereof.
  - c. The tenant shall continue to pay rent as and when the same falls due and payable.
  - d. Costs of the application shall abide the outcome of the main reference.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15<sup>TH</sup> JULY 2024**

**HON. JOYCE AKINYI OSODO**

**(PANEL CHAIRPERSON)**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON GAKUHI CHEGE**

**(MEMBER)**

In the absence of parties.

