



**Kareithi v Benjamin Thumu Mwangi t/a Uncle Ben & another (Tribunal Case E626 of 2023) [2023] KEBPRT 1152 (KLR) (Civ) (14 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1152 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E626 OF 2023  
P MAY, MEMBER  
NOVEMBER 14, 2023**

**BETWEEN**

**ELLY KAREITHI ..... APPLICANT**

**AND**

**BENJAMIN THUMU MWANGI T/A UNCLE BEN ..... 1<sup>ST</sup> RESPONDENT**

**JONATHAN KUYUNU NGATIA NDIRANGU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The tenant approached the Tribunal by filing the complaint dated 22<sup>nd</sup> June, 2023 seeking protection against the actions of the landlords. Together with the complaint he filed an application under certificate seeking for orders of temporary injunction and compensation for the loss he had incurred.
2. The application is premised on the grounds set out in the supporting affidavit sworn by the tenant who stated that the landlords had without any colour of right commenced an illegal process of terminating the tenancy and even confiscated his items.
3. The application has been opposed by the landlords who stated that the application was frivolous and amounted to an abused of the process of the Tribunal. The 2<sup>nd</sup> Respondent accused the tenant of having fallen into rent arrears thus the landlord was within his right to levy distress for rent.
4. The parties elected to canvass the application by way of written submissions. There has been compliance by both parties. I have considered the application, affidavits and submissions on record and would proceed as follows:
5. At the onset the 2<sup>nd</sup> respondent has challenged the jurisdiction of the tribunal to hear and determine the present dispute stating that there no longer exists controlled tenancy.



6. Under section 2(i) of [Cap 301](#), a 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 date thereof OR
    - iii. Relates to premises of class specified under subsection (2) of this section
7. I have considered the nature of tenancy between the Landlords and the Tenant and found that even on the Landlord's own admission it satisfied the requirements of section 2 of [Cap 301](#), as the landlords continued to receive rent upon the lapse of the tenancy thus creating a month-to-month tenancy which was controlled. I align/associate myself with the decision in the case of [Al-Riaz International Limited Vs Ganjoni Properties Ltd \[2015\]](#) eKLR where at page 7, the court stated;
 

“In my view, the provisions of section 2 of [Cap 301](#) are clear. That if a tenancy satisfied any of the conditions provided at section 2, the tenancy automatically becomes a controlled one and subject to the provisions of Cap 301...”
8. Having found that the tenancy in question is controlled, I will proceed to deal with the merits of the application by the tenant on whether the Applicant is entitled to a temporary injunction, I need only to consider the principles of granting an injunction espoused in the case of; *Giella vs- Cassman Brown & Co. Ltd* (1973) EA 358 to wit:-
  - (i) An Applicant must show a prima facie case with a probability of success.
  - (ii) An injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury.
  - (iii) When the court is in doubt it will decide the application on the balance of convenience.
9. The Tribunal having made a finding above that there exists controlled tenancy. It is important to restate that the process of terminating controlled tenancy is as provided under Section 4 of the Act which is couched in mandatory terms. The landlords having failed to issue a notice in the prescribed form and or seek the leave of the Tribunal so as to levy distress, it is clear that the tenant has a prima facie case with a probability of success.
10. In regard to whether the tenant might suffer irreparable injury, I only need to consider whether by enforcing the illegal distress by the landlords, the tenant will suffer any injustice in the pendency of the reference.
11. In the case of *Alkman – vs- Muchoki* (1982) eKLR at page 416, the Court of Appeal had the following to say while considering the effect of illegality and issuance of a temporary injunction:-
 

“The conditions for the grant of an interlocutory injunction were rightly understood but wrongly applied as follows.....the appellants had shown a clear and overwhelming prima facie probability of success, the court ought never to condone and allow to continue a flouting of the law. Those who flout the law by infringing the rightful title of others and



brazenly admit it, ought to be restrained by injunction. If I am adding a new dimension for the grant of an interlocutory injunction, be it so. Equity will not assist lawbreakers”.

12. I entirely subscribe to the foregoing views and the second ground for granting an interlocutory injunction is therefore met by the tenant.
13. I need not consider the third principle as I am not in any doubt in regard to the first two principles disclosed above.
14. There is clearly a dispute between the named landlords on the ownership of the premises. This is not the forum to determine the same. The tenant has indicated that they had been remitting rent to the 2<sup>nd</sup> Respondent landlord. It is also clear that this ruling will make the complaint filed moot.
15. In the premises, I make the following orders:-
  - a. The tenant’s application dated 22<sup>nd</sup> June, 2023 is allowed and the tenant is granted quiet and peaceful possession over the demised premises
  - b. The tenant shall pay rent to the 2<sup>nd</sup> Respondent as when it falls due
  - c. Each party shall bear their own costs

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14<sup>TH</sup> DAY OF NOVEMBER 2023.**

**HON. PATRICIA MAY - MEMBER**

**25.10.2023**

