



**Omar v Ali & another (Tribunal Case E312 of 2023)
[2024] KEBPRT 998 (KLR) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 998 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E312 OF 2023
CN MUGAMBI, CHAIR
JUNE 28, 2024**

BETWEEN

MOHAMED HASSAN OMAR TENANT

AND

OMAR MOHAMED ALI LANDLORD

AND

AL-YAMZA ENTERPRISES LTD AGENT

RULING

Introduction

1. The Tenant's Application dated 11.12.2023 seeks an order of injunction restraining the Respondent/ Landlord from interfering with the Tenant's quiet and peaceful possession of the premises known as Title Number Mombasa/Block XL/14 pending the hearing and determination of the complaint filed by the Tenant.

The Tenant's depositions

2. The affidavit in support of the Application sworn by the Tenant on 11.12.2023 may be summarized as follows:-
 - a. That the Applicant has been a long standing Tenant in the suit premises and has been dutiful towards his obligations.
 - b. That in the year 2015, the Landlord issued the Tenant with a letter requesting the Tenant to vacate the premises but the Landlord never pursued the said letter.



- c. That the Landlord has now issued the Tenant with another letter dated 11.09.2023 requiring the Tenant to vacate the premises and the Tenant has already informed the Landlord that the said notice to vacate is illegal.
- d. That the Landlord has failed to withdraw the said notice and the Tenant therefore seeks the intervention of this Tribunal.

The Landlord's depositions

- 3. The Landlord's/Respondent's replying affidavit may be summarized as follows;-
 - (a) That the notices referred to by the Tenant are not related to rent or at all.
 - (b) That the County Government of Mombasa has assessed the suit premises and recommended an intensive refurbishment and/or demolition of the suit premises.
 - (c) That on 20.01.2022, the Public Health Department of the County Government of Mombasa assessed the premises and declared it unsuitable for habitation and therefore advised that the same be demolished.
 - (d) That after a discussion with all the Tenants, all of them vacated the suit premises save for the Applicant herein.
 - (e) That due to the Tenant's refusal to vacate, the Respondent was arrested and charged in Case No 018 of 2022 wherein he was fined and pleaded for time to enable him comply with the County by Laws.
 - (f) That the Respondent is unable to comply with the by Laws of the County Government of Mombasa due to the Applicant's refusal to vacate from the suit premises.
 - (g) That the County Government has requested the court to allow it to demolish the structure which has many cracks on it and may collapse any time.
 - (h) That the Landlord finding himself in a difficult place, obtained court orders from the Chief Magistrates Court, Mombasa ordering the Tenant to vacate the suit premises within fourteen (14) days from the date of the order.
 - (i) That the Applicant was aware of the said court orders before he fixed these proceedings and the instant suit is therefore sub judice and ought to be dismissed.
 - (j) That the applicant is guilty of material non-disclosure and is approaching the Tribunal with unclean hands.

Analysis and determination

- 4. On 21.03.2024, the court directed the parties to file and exchange their written submissions within twenty-one (21) days of the directions. As at the time of writing this Ruling, none of the parties had filed any submissions.
- 5. The only issue that arises for determination is whether the Tenant is entitled to the orders sought in his Application.
- 6. The Tenant's Complaint arises from the letter dated 11.09.2023 which directed the Tenant to vacate the suit premises within a period of thirty (30) days failing which the Landlord would hand over the matter to his Advocates with a view to comply with the court direction.



7. Although the Landlord does not in his letter disclose the court directions, it is obvious that the only directions issued by a court in this matter are the ones in Civil Case No MCCC Misc E438/2023 wherein the Tenant was ordered to vacate the suit premises within fourteen (14) days failing which he would be evicted.
8. The notices issued by the Landlord to the Tenant are not the notices contemplated under Section 4 of Cap 301 and do not therefore strictly amount to valid notices. But, the Landlord has deponed in his replying affidavit that the notices have got nothing to do with rent or at all. The letter given to the Tenant and dated 11.09.2023 is clear that if the Tenant failed to vacate, then the Landlord would forward the matter to his Advocates to ensure that the court directions were followed. The threat to file suit and/or to forward the matter to the Advocates seem to have been carried out as on 5.12.2023, the Landlord filed suit and obtained the orders I have already referred to.
9. The Tenant was given an opportunity to further respond to the Landlord's affidavit. This the Tenant failed to do and as things stand, I have no reasons to doubt that indeed the orders in MCCC Misc E438/2023 are valid and in existence.

The orders in MCCC Misc E438/2023 were issued on 06.12.2023 while the instant Application and suit was filed and/or is dated 11.12.2023.

In these circumstances, the Tenant was obligated to deal with the said orders by either having the same reviewed and/or appealed from both of which the Tenant did not do.
10. The existence of the orders in the Magistrates Court is a clear bar to the making of any other orders in as far as the eviction of the Tenant is concerned absent any orders in review or Appeal.
11. Consequently, I do not find any merits in the Application dated 11.12.2023 and the same is dismissed with costs to the Landlord.

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

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the absence of the parties

