



**Mutahi v Icon Valuers Limited & 2 others (Tribunal Case E585 of 2024)
[2024] KEBPRT 1331 (KLR) (11 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1331 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E585 OF 2024
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
SEPTEMBER 11, 2024**

BETWEEN

ROBERT S. K. MUTAHI APPLICANT

AND

ICON VALUERS LIMITED 1ST RESPONDENT

**EDWIN MWANGI WAIRAGU T/A TRADE WINE AUCTIONEERS 2ND
RESPONDENT**

WITEITHIE FARMERS COMPANY LIMITED 3RD RESPONDENT

RULING

A. Dispute background

1. The tenant/applicant moved this Tribunal vide a Reference dated 21st May 2024 under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 with a complaint that the landlord/agent had closed the suit premises over rent dispute.
2. The tenant filed a notice of motion under a certificate of urgency dated 21st May 2024 in which he sought for the following orders; -
 - i. That the application be certified urgent.
 - ii. That the respondents be ordered to immediately open the suit premises herein namely office No. 105 situate at Witeithie House, 1st Floor, Kwame Nkurumah Street, Thika, pending hearing and determination of the application.
 - iii. That the tribunal issues injunctive orders of stay of execution against the proclamation issued by the 2nd respondent and all other consequential orders pending hearing and determination of the suit.



- iv. That the tribunal issues an injunctive order against the respondents from interfering with the applicant's occupation of the suit premises until hearing and determination of the suit.
 - v. That the O.C.S Thika Police Station provides assistance and ensure compliance.
 - vi. That 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 herein is trading as Mutahi Kanyi & Associates Advocates.
 - ii. That the tenant entered into a tenancy agreement with the 3rd respondent/landlord in May 2023 and has been paying rent on time since the year 2023 and purely relies on the business he runs at the suit premises.
 - iii. That unless the suit premises are opened, the tenant and his law firm business will suffer irreparable loss since the tools of trade including diaries, clients' files and documents are locked inside and some of the files have dates in court which may not be attended to.
4. On 22nd may 2024, the tribunal issued orders that the respondents immediately open the suit premises as well as orders of stay of execution against the proclamation issued by the 2nd respondent pending the hearing of the application inter-partes.
5. The application is opposed vide a replying affidavit sworn by the director of the landlord dated 20th June 2024 in which he deposes as follows; -
- i. That the monthly rent payable by the 5th of every month by the tenant is KES. 15,190 which the tenant has not been paying regularly on the due dates thus accumulating arrears of KES.92,087 as at the time of filing the affidavit.
 - ii. That Mr. Collin Elliud, a principal officer of the 1st respondent, did send on behalf of the landlord, instructions to the 2nd respondent on 18th April 2024 to levy distress for rent when the arrears had accumulated to KES. 61, 707.40. A copy of the said letter is annexed as "DNM 1".
 - iii. That the 2nd respondent visited the tenant in his office on 22nd April 2024 and served the tenant with a proclamation of attachment. Annexed as "PNM-2 (a & b)" is a letter dated 28th April 2024 and proclamation of attachment dated 22nd April 2024 respectively.
 - iv. That the tenant continues to accumulate rent arrears even as he seeks this tribunal's assistance.
 - v. That the landlord has never denied the tenant access to the suit premises
 - vi. That the landlord has not issued the tenant with any notice for termination of, or alteration of terms and conditions of tenancy.
 - vii. That the landlord's actions are in reaction to the tenant's non-payment of rent.
 - viii. That the 1st and 2nd respondents acted as agents of the landlord.
 - ix. That the landlord is apprehensive that it stands to suffer if the tenant is allowed to get away with the accumulated rent arrears.
 - x. That the office furniture and equipment will not be sufficient to recover all the rent arrears accumulated so far.
6. The landlord filed a notice of motion dated 20th June 2024 in which he sought for the following orders; -



- i. That the tribunal issues orders for payment of all rent arrears accrued by the tenant pending the hearing of the application as well as the tenant's application dated 21st May 2024.
 - ii. That the tribunal permits the levy of distress upon the tenant for all rent arrears accruing and as shall continue to accrue pending the hearing of the reference.
 - iii. That the tribunal issues orders restraining the tenant from removing any of his furniture and office equipment pending hearing of the application and reference.
 - iv. That costs of the application be provided for.
7. The application is supported by an affidavit of even date whose contents are similar to what has been sworn in the landlord's replying affidavit dated 20th June 2024.
8. The landlord filed another affidavit dated 14th July 2024 in which he deposes as follows; -
 - i. That the rent arrears as at the end of July 2024 is KES. 107,277
 - ii. That the affidavit has been sworn for purposes of exhibiting the rent schedule and outstanding amount in rent arrears as at the end of July 2024. A copy of letter dated 18th April by the 1st respondent addressed to the 2nd respondent is annexed as "PNM 1".
9. On 15th July 2024, the tribunal directed that both applications be canvassed together by way of written submissions and the tenant/applicant was granted leave to file their response to the landlord's application dated 20th June 2024.
10. None of the parties complied with the orders above and we shall therefore rely on the affidavits and annexures filed herein while dealing with the issues for determination.

B. Issues for determination

11. The following issues arise for determination; -
 - a. Whether the application dated 21st May 2024 is merited.
 - b. Whether the application dated 20th June 2024 is merited.
 - c. Who shall bear the costs of the applications?

Issue (a) Whether the application dated 21st May 2024 is merited.

12. The tenant approached this tribunal seeking immediate opening of the suit premises as well as orders of injunction against the respondents pending hearing and determination of the application and complaint.
13. The tenant in his supporting affidavit has sworn that he has been paying rent on time since the year 2023.
14. The landlord on the other hand has sworn in his replying affidavit that the tenant has rent arrears and that his actions are as a result of the tenant's non-payment of rent.
15. The tenant has not filed any evidence to show that he has been paying rent or to show that he has no rent arrears.



16. In addition, the tribunal on 21st June 2024 directed that the parties file and exchange rent account statements of which only the landlord filed and is annexed to the landlord's affidavit dated 14th June 2024.
17. In Samuel Kipkrori Ngeno & Another – vs- Local Authorities Pension Trust (Registered Trustees) & Another (2013) e KLR 12, the court stated in paragraph 9 as follows:
- “A tenant's first and main obligation is to pay rent as and when it becomes due, for the landlord has the right to an income from his investment. Why would a tenant allow himself to fall into such huge arrears of rent?”
18. The foregoing case provides sufficient guidance that the landlord is entitled to rent payment from the tenant. The tenant herein has not filed any evidence to prove that he has been paying rent for the period in dispute. It is trite law that “he who alleges must prove”.
19. Based on the above analysis, this tribunal has no reason to disbelieve the landlord. We shall order that the tenant's application be dismissed and that the tenant settles the claimed rent arrears owing to the landlord, failure to which the landlord shall be at liberty to recover the same using lawful means including distress.

Issue (b) Whether the application dated 20th June 2024 is merited.

20. The landlord filed the application dated 20th June 2024 seeking for payment of all rent arrears accrued by the tenant, permission to levy distress and orders restraining the tenant from removing any of his furniture and office equipment from the suit premises.
21. The said application is unopposed. We therefore have no other option than to allow the said application as prayed.

Issue (c) Who shall bear the costs of the applications?

22. 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 costs of both applications to the respondents in view of the fact that the tenant has failed to prove his case.

C. Orders

23. In conclusion, the following final orders commend to us;
- a. The application dated 21st May 2024 is hereby dismissed with costs to the landlord/respondent.
 - b. The application dated 20th June 2024 is allowed as prayed.
 - c. The reference dated 21st May 2024 is settled in terms.
 - d. The tenant shall immediately pay all the outstanding rent arrears owing to the landlord failing which the landlord shall be at liberty to recover the same using lawful means including distress.
 - e. Costs of both applications in the sum of KES. 35,000 to the landlord/respondent.
- It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11TH SEPTEMBER 2024



HON. JOYCE AKINYI OSODO - (PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE - (MEMBER)

In the presence of:

Kinyua for respondents

No appearance for Tenant/applicant

