



**Khasandi t/a Sarini Bistro v Tankha Limited (Tribunal Case
E071 of 2024) [2024] KEBPRT 1605 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1605 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E071 OF 2024
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
NOVEMBER 15, 2024**

BETWEEN

SHARON KHASANDI T/A SARINI BISTRO TENANT

AND

TANKHA LIMITED LANDLORD

RULING

A. Dispute Background

1. The tenant/applicant moved this Tribunal vide a Reference dated 12th July 2024 under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301, Laws of Kenya with a complaint that the landlord had issued her with a proclamation notice for distress of rent dated 10th June 2024 through Liester Auctioneers although she had paid the monthly rent in the sum of Kshs 100,000/=.
2. The tenant/applicant simultaneously filed a notice of motion dated 12th June 2024 under certificate of urgency seeking for restraining orders against the landlord/respondent, agents or servants, from levying distress for rent against her in respect of premises described as Rubis Service Station Flyover Kitale pending hearing and final determination of the application and the suit. She also seeks that the costs of the application be provided for.
3. The application is premises on the grounds set out on the face thereof and the supporting affidavit of the tenant/applicant sworn on 13th June 2024 wherein it is deposed that she is a tenant in the landlord's premises described as Rubis Service Station Flyover Kitale operating a restaurant business since October, 2020 and has been paying rent and utility bills as per agreement.
4. On 7th June, 2024 the tenant paid her rent in full totaling to Kshs. 100,000/= which was more than what she owed the landlord/respondent as per the copy of bank statement from KCB annexed and marked as "SK-1".



5. The landlord/respondent surprisingly engaged the services of Lister Auctioneers to levy for distress for rent as per the copy of the proclamation notice and the invoice annexed and marked "SK-2 (a) (b)".
6. According to the tenant, all had been well until the landlord/respondent with view of evicting her began apportioning more bills than what was consumed.
7. The tenant deposes that she is apprehensive that the landlord/respondent may evict me anytime from the premises if not restrained by an order of this Tribunal and that she will suffer loss and damage.
8. The application is opposed through the replying affidavit sworn on behalf of the landlord on 10th July 2024 by Cyllus Onyango wherein he deposes that the tenant has been in rent arrears and utility bills for over 7 months thus accruing an amount of over Kshs. 1, 371, 091.40 as at 4th July 2024 as per schedule annexed to the replying affidavit marked CO-1 tabulating the same.
9. The tenant/applicant had filed a similar case raising similar issues vide Eldoret Tribunal Suit No. E001 of 2024 between Sharon Khasandi T/A Sarini Bistro Vs. Tankha Limited, which was dismissed on 30th April 2024 rendering the application and reference filed herein Res Judicata. The landlord has attached a copy of the pleadings in the said case as annexure CO-2.
10. The Landlord subsequently issued a notice dated 9th May 2024 seeking to terminate the tenancy on account of the monumental arrears owed by the tenant. The landlord's notice and email confirming service is attached as annexure CO-3.
11. As such, the instant application and reference by the tenant is attacked for being frivolous, vexatious and an abuse of the court process.
12. According to the landlord, the balance of convenience tilts in favor of the Respondent and against granting of the orders sought by the tenant.
13. It is further deposed that the bank statement demonstrating payment of Kshs. 100,000/- by the tenant is an attempt to mislead the court as the amount is a mere fraction of what the tenant owes.
14. The landlord also filed a notice of preliminary objection dated 10th July 2024 based on the doctrine of Res Judicata and the fact that the suit herein is frivolous, vexatious, an abuse of court process, incompetent, fatally defective and that therefore ought to be struck out or dismissed with costs.

B. Issues for determination

15. The following issues arise for determination.
 - a. Whether the tenant is entitled to the reliefs sought in her reference and application dated 12th June 2024.
 - b. Who shall bear the costs of the case?

Issue (a) Whether the tenant is entitled to the reliefs sought in her reference and application dated 12th June 2024

16. The tenant/applicant moved this Tribunal vide a Reference dated 12th July 2024 under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), Cap 301, Laws of Kenya with a complaint that the landlord had issued her with a proclamation notice for distress of rent dated 10th June 2024 through Liester Auctioneers although she had paid the monthly rent in the sum of Kshs 100,000/=.



17. The tenant/applicant simultaneously filed a notice of motion dated 12th June 2024 under certificate of urgency seeking for restraining orders against the landlord/respondent, agents or servants, from levying distress for rent against her in respect of premises described as Rubis Service Station Flyover Kitale pending hearing and final determination of the application and the suit. She also seeks that the costs of the application be provided for.
18. The application is opposed through the replying affidavit sworn on behalf of the landlord on 10th July 2024 by Cyllus Onyango wherein he deposes that the tenant has been in rent arrears and utility bills for over 7 months thus accruing an amount of over Kshs. 1,371,091.40 as at 4th July 2024 as per the schedule annexed to the replying affidavit marked CO-1 tabulating the same.
19. The tenant/applicant had filed a similar case raising similar issues vide Eldoret Tribunal Suit No. E001 of 2024 between Sharon Khasandi T/A Sarini Bistro Vs. Tankha Limited, which was dismissed on 30th April 2024 rendering the application and reference filed herein Res Judicata. The landlord has attached a copy of the pleadings in the said case as annexure CO-2.
20. The Landlord subsequently issued a notice dated 9th May 2024 seeking to terminate the tenancy on account of the monumental arrears owed by the tenant. The landlord's notice and email confirming service is attached as annexure CO-3.
21. As such, the instant application and reference by the tenant is attacked for being frivolous, vexatious and an abuse of the court process.
22. According to the landlord, the balance of convenience tilts in favor of the Respondent and against granting of the orders sought by the tenant.
23. It is further deposed that the bank statement demonstrating payment of Kshs. 100,000/- by the tenant is an attempt to mislead this court as the amount is a mere fraction of what the tenant owes.
24. The landlord also filed a notice of preliminary objection dated 10th July 2024 based on the doctrine of Res Judicata and the fact that the suit herein is frivolous, vexatious, an abuse of court process, incompetent, fatally defective and it therefore ought to be struck out or dismissed with costs.
25. In the case of Samuel Kipkori Ngeno and Another – vs- Local Authorities Pension Trust (Registered Trustees) & Another (2013) eKLR at paragraphs 9 and 12, the superior court held as follows: -
 - “9. 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?”
 - “12. The temporary injunction sought in the present application is an equitable remedy at the court's discretion. He who comes to equity must come with clean hands. A tenant who is in huge arrears of rent is underserving of the court's discretion. The court cannot be refuge of a tenant who fails to meet his principal obligation of paying rent as and when it becomes due”.
26. In the instant case, the landlord has sworn a replying affidavit stating that the tenant was indebted to it in the sum of Kshs 1,371,091.40 as at 4th July 2024. The tenant did not dispute the said tabulation of the amount owing neither has she provided any evidence to demonstrate that the amount claimed is not owing.
27. Having failed to pay rent as and when the same fell due and payable, the tenant is not entitled to the equitable remedy of injunction against the Respondent. The interim orders of injunction and status



issued herein were given after the tenant misrepresented facts by alleging that they had faithfully paid rent to the landlord in full and the same ought to be discharged.

Issue (d) Who shall bear the costs of case?

28. 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 award costs to the landlord being the successful party.

C. Orders

29. Given the above analysis, the final orders which commend to us are;
- a. The tenants' application and reference dated 12th June 2024 is hereby dismissed with costs and the interim orders are hereby discharged.
 - b. The landlord/Respondents' costs are assessed at Kshs.30,000/= against the tenant.
- It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15TH NOVEMBER 2024

HON. GAKUHI CHEGE

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON JOYCE A OSODO

(MEMBER)

In the presence of:

Miss Mukunda holding brief for Nakitare for the tenant

Kangogo for the Landlord

