



**Nyairo v Ndegwa (Tribunal Case E287 of 2023)
[2024] KEBPRT 693 (KLR) (19 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 693 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E287 OF 2023
CN MUGAMBI, CHAIR
APRIL 19, 2024**

BETWEEN

SAMSON MOSOTI NYAIRO TENANT

AND

RACHEL NDEGWA LANDLADY

RULING

Introduction

1. The Tenant's Application dated 22.11.2023 seeks orders restraining the Landlady from interfering in any manner with the Tenant's quiet enjoyment of the business premises situated at Migadini within Mombasa pending the hearing and determination of the Reference filed herein. The Tenant has also applied for an order for immediate access to the suit premises and a further order that the Respondent be compelled to pay damages for the perishable goods (milk) to whose access the Respondent denied the tenant. Costs of the Application have also been sought.

The Tenant's depositions

2. The Tenant has filed an affidavit in support of his Application which he has deponed that he pays a monthly rent of Kshs. 5,000/=.
3. The Tenant has deponed in his affidavit that on 2.11.2023, he paid Kshs. 7,000/= to the Respondent covering the rent for the month of October and part of November, 2023 but the Landlady returned the money and proceeded to lock the suit premises with the Tenant's perishable milk in the said premises.
4. The Tenant has also deponed that the Landlady did not give her any notice to vacate the said premises and the Landlady has therefore violated the "equitable" rights of the Tenant.



The Landlord's depositions

5. The Landlady has deponed in his replying affidavit sworn on 26.2.2024, that the Tenant is a habitual rent defaulter and has never paid any rent as agreed upon.
6. The Landlady also depones that in September, 2023, the parties agreed that the Tenant would vacate the suit premises since he was unable to pay rent by the end of October. The Tenant was further to utilize his rent deposit to cover the rent of October, 2023 but instead of vacating as agreed, the Tenant sent to the Landlady Kshs. 7,000/= which the Landlady returned to the Tenant.
7. That further, the Tenant has not paid any rent from November, 2023 to February, 2024 when the Landlady swore her replying affidavit and is in rent arrears of Kshs. 35,000/= inclusive of the shop deposit which the Tenant has refused to pay.

Analysis and determination

8. The only issue that arises for determination in this Application is whether the Tenant is entitled to the orders sought in her Application.
9. The Tenant's main complaints are that the Landlord locked the suit premises with the Tenant's goods, namely; milk therein and therefore that the Tribunal should order for the re-opening of the suit premises and for the payment of damages for the spoilt milk.
10. Whereas the Landlady does not deny closing the Tenant's premises, the Landlady claims that it is the Tenant who failed to vacate the premises at the end of October, 2023 as had earlier been agreed between the parties. I do not think that the Landlady was justified in closing the Tenant's suit premises in the absence of a valid court order. The closure of the suit premises amounted to an illegal attempt to terminate the tenancy and was contrary to the provisions of Section 4(1) (2) of Cap 301. The only avenue open to a Landlady for the termination of a controlled tenancy is by issuing the mandatory notice to terminate tenancy under Section 4(2) of Cap 301. This, the Landlord did not do.
11. The Tenant's claim for damages on account of the perishable milk locked in the premises by the Landlady cannot be sustained for lack of particularity. The Tenant has not presented any material before the Tribunal in support of his claim for damages. The loss of the milk ought to have been particularly pleaded and a figure assigned to the loss. The Tenant's claim for damages therefore fails.
12. The Landlady has submitted that the Tenant is in rent arrears of Kshs. 35,000/= inclusive of the shop deposit. The Landlady has also deponed in her affidavit that the Tenant has not paid rent from the month of November 2023 to February 2024. I do not have any clarity as to how the Landlady arrived at the sum payable for the shop deposit as there is no written lease agreement and none of the parties is clear on whether the payment of the deposit formed part of the oral agreement between the parties. I am only able therefore to find that the Tenant is in rent arrears only as the Tenant has not controverted the deposition by the Landlady on account of the rent arrears.
13. In view of the above findings, the orders which commend themselves to the Tribunal and which I hereby make are the following:-
 - a. That the Landlady is enjoined from evicting the Tenant from the suit premises WITHOUT following the procedure laid under Section 4 of Cap 301.
 - b. That the Tenant is hereby ordered to clear all outstanding rent arrears to date within the next thirty (30) days failing which the Landlady will be at liberty to levy distress for rent against the Tenant using a licensed auctioneer.



- c. That the Tenant's claim for damages on account of the alleged spoilt milk is dismissed.
- d. That the Reference by the Tenant is determined in the terms set out in paragraph 13(a), (b) and (c).
- e. That each party shall bear their own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19TH DAY OF APRIL, 2024

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Gitonga for the Landlady and in the absence of the Tenant and Counsel

