



**Anyango v Gam Holding Limited (Tribunal Case E669 of 2022)
[2023] KEBPRT 286 (KLR) (Commercial & Admiralty) (13 April 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 286 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
COMMERCIAL AND ADMIRALTY
TRIBUNAL CASE E669 OF 2022
A MUMA, VICE CHAIR
APRIL 13, 2023**

BETWEEN

BENTA OLOO ANYANGO APPLICANT

AND

GAM HOLDING LIMITED RESPONDENT

JUDGMENT

A. Parties And Their Representatives

1. The tenant/Applicant Benta Aloo Onyango rented a premises described as G01 located at pipeline estate within Nairobi County. The tenant was acting in person.
2. The Respondent GAM Holdings Limited is a company which manages and collects rent of the said remises on behalf of the Landlord.
3. The Firm of Wakarura Irungu & Company Advocates represents the Respondent.

The Background Of The Dispute

4. The Tenant herein bought the butchery business from Tobias Muiya Kimeu ID NO 27172XXX as evidenced by a sale agreement dated February 24, 2022.
5. The tenant took up the business, paid the rent together with the deposit in the sum of Kshs 20,000 as per the Landlord -tenant agreement between Tobias Muiya and the Respondent.
6. On several occasions, the Respondent has verbally threatened the tenant with eviction from the premises.



7. Since clearing the rent balance on July 12, 2022, the Respondent has been harassing, threatening, and has locked the premises without proper notice interfering with the carrying out of business by the tenant.
8. The tenant vide a reference and a notice of motion application dated July 26, 2022 sought orders; that the Respondent be restrained from any further dealing, attachment, harassment, and renting out the premises, setting aside the eviction notice if any, and the re-opening of the locked business premises.
9. Accordingly, this Honorable Tribunal allowed the application and granted the tenant prayers in the application vide its ruling delivered on July 27, 2022. Further, the tenant was ordered to serve the Respondents for hearing on September 7, 2022.
10. Subsequently, the Respondent filed a notice of motion application dated August 8, 2022 praying that the *ex-parte* orders issued on July 27, 2022 be stayed, reviewed and set aside.
11. Thereafter, the tenant filed an application dated September 21, 2022 seeking this Tribunal's further protection against eviction, attachment and sale of the tenant's goods in the premises, and to compel the Respondent to allow the tenant carry out his business.
12. This Honorable Tribunal vide a ruling dated September 22, 2022 issued orders that the Respondent release the Tenant's goods and any other item unconditionally and the Tenant to pay rent for October before the hearing of the application inter partes. Further, the Tenant was ordered to serve for hearing on November 3, 2022.

Claim & Defence

13. The tenant vide a further affidavit dated March 3, 2023 claims that she rented the premises in the month of February 2022 for a two-year lease as evidenced by a sale agreement dated February 24, 2022.
14. The Tenant claims that she bought the business from Tobias Muiya for the sum of Kshs 180,000, after which she Tobias Muiya handed over the business to her.
15. Upon the execution of the sale agreement, the obligation to pay rent to the landlord accrued to the Tenant herein. She then paid rent and a deposit in the sum of Kshs 20,000.
16. The Respondent contends that there exists a landlord-tenant relationship. In its replying affidavit dated November 24, 2022, the Respondent states that the Applicant has never been a tenant of the Respondent.
17. It is the Respondent's case that Mr Tobias Muiya is the tenant of the Respondent. Further that the Applicant's occupation was contrary to the tenancy agreement executed between the respondent and Mr Tobias Muiya which prohibited sub-letting and transfer of the tenancy. The Applicant's occupation of the premises was thus illegal.

Issues For Determination

18. I have carefully considered all pleadings and evidence before me. I find that one key issue falls for determination;
 - a. Whether there exists a landlord-tenant relationship?
 - b. Whether the eviction was subject to a proper notice?
 - c. Whether the Tenant is entitled to damages?



Analysis And Determination

Whether there exists a Landlord-Tenant Relationship

19. Pursuant to Section 2 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishment\) Act](#) Cap 301, there exists two forms of tenancy agreement: Written and oral or by implication.
20. There is no evidence of a written tenancy agreement between the Tenant and the Respondent. However, the Tenant has been in occupation of the premises and has been paying rent to the respondent and not to Mr Tobias Maiyu. This creates a tenancy relationship by implication as provided under Section 2 of [cap 301](#).
21. The Tenant has been paying rent in the sum of Kshs 10,000 directly to the Landlord who has continuously received the rent as evidenced by Co-operative bank agent receipts dated June 12, 2022 and July 10, 2022. Additionally, the inspection report indicates that the tenant has been in occupation of the premises before closure and she has been paying rent to the Respondent through their bank account.
22. Being a controlled tenancy, the Tenant has right to be protected by this Honorable Tribunal in the exercise of its jurisdiction.

Whether the eviction was subject to a proper notice?

23. Section 4 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishment\) Act](#) Cap 301 provides that where a landlord wishes to terminate a controlled tenancy, they must issue a two-months' notice to the tenant in the prescribed form, indicating the grounds of the said termination.
24. The Respondent herein failed to issue a proper notice to the Tenant. In fact, it locked the business premises, bringing the business to a standstill. The inspection report reveals that there was no operation at the time of the inspection, despite the Respondent having been ordered by this Tribunal to re-open the premises on July 27, 2023.
25. Based on the above I therefore find that the said closure was illegal and improper as no notice was issued to the Tenant.

Whether the Tenant is entitled to damages

26. Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishment\) Act](#) Cap 301 provides that;

In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit.

27. The orders referred to include an order to award damages. The power of the Tribunal to assess and award damages was confirmed by the Environment and Land Court in ELC Appeal No 19 of 2021 where the Court referred the matter back to the Tribunal for assessment of damages for loss of tenancy.
28. Damages may be in the form of general or special damages. While general damages are to be assessed by the Court, Special damages must be specifically pleaded and strictly proved by evidence. The Court in



differentiating between special and general damages in the case of *Antique Auctions Ltd v Pan African Auctions Ltd* [1993] eKLR stated that;

“Compensation for a wrong committed could be claimed as general damages or special damages. In general damages compensation cannot be quantified but will be assessed by the court. In the case of special damage, such claim of the loss must be specifically pleaded and strictly proved. Proof of damages is by evidence and the Court will decide each case on a balance of probability”

29. Similarly, the Court of Appeal stated its position on special damages in the case of *Richard Okuku Oloo vs South Nyanza Sugar Co Ltd* [2013] eKLR as follows:

“We agree with the learned judge that a claim for special damages must indeed be specifically pleaded and proved with a degree of certainty and particularity but we must add that, that degree and certainty must necessarily depend on the circumstances and the nature of the act complained of.”

30. On 18th October, the Tribunal directed the Tenant to file an affidavit of loss of business and income from the business per week since the shop was closed by the Respondent. The said affidavit was filed on November 15, 2022 with a claim of damages in the sum of Kshs 40,480.00 with the shop having been closed for 19 weeks.

31. Subsequently, the Tenant filed an affidavit of lost items dated November 23, 2022 as directed by this Honorable Tribunal on November 16, 2022. The amount claimed is a sum of Kshs 1,595,036.00.

32. In awarding special damages, I find that the Tenant has failed to strictly prove the loss as claimed. There is no evidence to show ownership and presence of some of those items at the shop. I therefore find that the Tenant is only entitled to Kshs 180,000 being the amount incurred in acquiring the shop as indicated in the agreement for sale.

33. In awarding general damages, this Honorable Tribunal is guided by its decision in Tribunal case No 8 of 2019; *Robert Ayieko Angoi v Lena Serange* where it stated that;

“General damages are compensation awardable by the Tribunal or Court as an assessment arrived at by considering the total effect of loss suffered by the Applicant and hence cannot be quantified by the applicant but assessed by the Court while taking into account various factors.”

34. In *Rose Wangui Githioni v Nancy Nyambura Maina* [2017] EKLR, the Tenant was awarded general damages of Kshs 300,000.00 plus costs and interests. The Landlord lodged an appeal on the ground that the trial Court erred in awarding general damages in a case of breach of contract. The Court upheld the decision of the trial Court as it was convinced that the Landlord's actions were oppressive, high-handed, outrageous insolent or vindictive.

35. In its decision, the Court relied on the case of *Marine Management Association & Another vs National Maritime Authority* (2012) 18NWLR 504 where the court stated that;

“Whereas the general principle is that courts do not normally award damages for breach of contract, there are exceptions such as when the conduct of the respondent is shown to be oppressive, high-handed, outrageous insolent or vindictive. “



36. The actions of the Landlord fall within these exceptions. The landlord failed to heed to the directions of this Tribunal which ordered it to re-open the business. In fact, the closure continued for 16 weeks occasioning loss to the tenant.
37. In light of the foregoing, and having assessed the claim by the Tenant and the Landlord, I award damages for loss of business of (40,480x16) Kshs 640,000.00 to the Tenant.

Orders

38. The Upshot is that the Tenants reference and application dated July 26, 2022 is allowed in the following terms;
- a. The landlord shall pay to the Tenant Special damages of Kshs 180,000 being the amount paid to acquire shop in the agreement.
 - b. The Landlord shall pay to the Tenant general damages of Kshs 640,000 for loss of business for 16 weeks.
 - c. Special damages of Kshs 28,500.00 as costs incurred in filing, inspection, and service to the tenant.
 - d. Interest on a,b,c above at court rates from date of judgment till payment in full.
 - e. The Tenant shall have Costs assessed at Kshs 20,000.00
 - f. Leave to appeal granted and typed proceedings to be provided.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. MUMA THIS 13TH DAY OF APRIL 2023 IN THE PRESENCE OF IRUNGU FOR THE LANDLORD N/A FOR THE TENANT.

HON. A MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

