



**Royal Point Limited v Tdm International (Tribunal Case E127 of 2023)
[2023] KEBPRT 616 (KLR) (13 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 616 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E127 OF 2023
A MUMA, AG. CHAIR
SEPTEMBER 13, 2023**

BETWEEN

ROYAL POINT LIMITED TENANT

AND

TDM INTERNATIONAL LANDLORD

RULING

A. Parties and Their Representatives

1. The Applicant herein is the current occupant of the Suit Premises owned by the Landlord being Business Suite No.6 situate at Prime Bank Building, Biashara Street, Nairobi, within the Republic of Kenya.
2. The Applicant is appearing in person.
3. The Respondent is the owner of the Suit Premises occupied by the Applicant.
4. The Respondent is represented by the Firm of Wambui Shadrack & Associates Advocates.

B. Dispute Background

5. Vide a Reference dated 3rd January 2023 and Notice of Motion Application of even date, the Applicant herein approached this Tribunal seeking inter alia, orders that the Respondent be compelled to unconditionally re-open the suit premises pending the hearing and determination of the case. Further, that the Respondent be restrained from breaking into the suit premises and howsoever interfering with the Applicant's tenancy, quiet occupation and lawful enjoyment of the premises pending the hearing and determination of the application.



C. The Tenant's Case

6. The Tenant averred that on 25th January 2023 the Landlord illegally locked its business premises located at Prime Bank Building along Biashara Street without prior notice, court order or justifiable cause. Further, that the Landlord acted in such a manner after forcefully confiscating the Tenant's keys from one of the employees.
7. The Tenant further averred that it tried reasoning with representatives of the Respondent to reopen the said business premises but the Respondents blatantly refused to reopen the premises without a justifiable cause for such arbitrary actions.
8. Further, the Tenant's prayer is that the Respondent's actions complained of is a clear exhibition of utter disregard for the due process of law and that this Tribunal's intervention is necessary to deter the Respondent from swimming in glory of its illegal actions.
9. Ultimately, the Tenant urged the Tribunal to grant the prayers as sought in the application.

D. The Landlord's Case

10. Vide a Replying Affidavit sworn on 14th February 2023 by Daniel Nyakundi, a Director of the Landlord Company, the Landlord swore that the allegations fortified by the Tenant were malicious, false, misplaced and misrepresented. He acknowledged the Tenancy of the Tenant at the premises with effect from February 2022 and that during the Tenancy period, they have had differences majoring in late or non-payment of the rent and refusal to pay the fine associated with late payment.
11. He further swore that he invited the Tenant at the beginning of January 2023 for a deliberation on its plans to settle the accruing rent which had escalated to a total of KShs.112,000.00 being rent arrears of the months of March, October and December 2022, January and February 2023 respectively.
12. The Landlord also swore that due to the Tenant's actions, it found another Tenant who was willing to occupy the business premises and in the presence of 3 Police Officers, he shifted the Tenant's property from the business suite to the store, which property is now held as security.
13. The Landlord further swore that unless the rent arrears are cleared, it will be forced to seek orders of disposing of the property to cater for the rent arrears since it is already incurring losses. Further, he faulted the Tenant for instituting the suit in bad faith since it had evaded paying rent and without presenting any payment proposal/plan tried to elope with the rent arrears.
14. Ultimately, the Landlord urged this Tribunal to dismiss the Tenant's reference and application and order the payment of the outstanding rent arrears.

E. Issues for Determination

15. I have given full consideration to the Tenant's Reference and Notice of Motion Application, the rival affidavits deponed.
16. In my respectful view, I find that the sole issue that falls for determination is:



Whether there are rent arrears owed to the Landlord.

F. Analysis And Determination

Whether the rent arrears are up to date?

17. I have noted that both Parties acknowledge the existence of a Lease Agreement that gave rise to the present contractual relationship between them. The said Lease Agreement was produced before this Tribunal and I shall proceed to consider the same.
18. The Lease Agreement dated 7th February 2023 birthed the Tenancy period for a term of 12 months from the effective date. Clause 1 stipulates that the rent payable by the Tenant to the Landlord is to the tune of KShs.20,000.00 on a monthly basis. Further, Clause 9 of the Lease Agreement also provides that failure to comply with the terms warrants the Lessor to terminate the Lease without notice.
19. I now turn to the question of rent arrears. It is the Landlord's case that the Tenant accrued rent arrears to the tune of KShs.112,000.00. The Landlord has produced Statements of Account revealing that the Tenant is in arrears for the months of March, October and December 2022, January and February 2023 respectively. On the other hand, the Tenant has neither provided a Statement of Account nor controverted the allegations of rent arrears. On this ground, I am persuaded and consequently find that the Tenant is in breach of its obligation of payment of rent as and when it falls due under the Agreement.

G. Orders

20. Having established that the Tenant owes the Landlord rent arrears, the following orders shall abide:
 - a. Tenant's Reference and Application both dated 3rd January 2023 are dismissed.
 - b. The Tenant is hereby ordered to pay the rent arrears now standing at Kshs 112,000.00 to the Landlord within 14 days from today's date.
 - c. Costs to be borne by the Tenant assessed at KShs. 20,000.

HON A. MUMA

Ag Chair/Member

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Judgment dated, signed and delivered virtually by Hon A. Muma this 13th day of September 2023 in the presence of Shadrack Wamboi for the landlord and Michael for the Tenant.

HON A. MUMA

Ag Chair/Member

BUSINESS PREMISES RENT TRIBUNAL

