



Blessed Shelters Holding Limited & another v Ngure & 2 others (Tribunal Case E283 of 2024) [2024] KEBPRT 1356 (KLR) (17 September 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1356 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E283 OF 2024
GAKUHI CHEGE, CHAIR
SEPTEMBER 17, 2024**

BETWEEN

BLESSED SHELTERS HOLDING LIMITED 1ST APPLICANT

LUCY WATIRI KIMANI 2ND APPLICANT

AND

RACHEL WAIRIMU NGURE 1ST RESPONDENT

WANGUI KURUI 2ND RESPONDENT

MR GITAU 3RD RESPONDENT

RULING

A. Dispute Background

1. The tenants/applicants moved this Tribunal vide a Reference dated 28th February 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 locked them out of the suit premises without justifiable reasons yet they had been paying rent without fail.
2. The tenants/applicants simultaneously filed a notice of motion dated 28th February 2024 under certificate of urgency seeking for restraining orders against the Respondents, their agents, servants or anyone acting on their behalf from interfering with their occupation of the suit premises. They also sought for a mandatory order compelling the respondents to reopen and restore their full access to the business premises pending the hearing of the case with the OCS, Ruiru Police Station ensuring compliance with the orders.
3. The application is premised on the grounds set out on the face thereof and the supporting affidavit of the 1st tenant/applicant sworn on 28th February 2024 wherein it is deposed that they had been locked



out of the suit premises located in Ruiru which had caused their business known as Blessed Shelters Holdings Limited irreparable loss and damage.

4. According to the tenants, they had consistently and diligently fulfilled all monthly rental obligations without any default or deviation. It is further deposed that the respondents' actions are motivated by a sinister agenda to lease the premises to a new tenant at an elevated monthly rent.
5. The tenants depose that they are solely reliant on the income generated from the business conducted at the suit premises to meet their basic needs and to fulfill their financial obligations towards their employees.
6. According to the tenants, the respondents conduct is unjust and constitutes a breach of their rights as faithful tenants for the past 11 years and unless the orders sought are granted they will continue to suffer irreparable loss and damage thereby jeopardizing the business and welfare of its employees.
7. Interim orders were granted on 29th February 2024 in terms of prayers 2, 4, 6 and 7 pending hearing inter-partes on 27th March 2024. On the subsequent hearing date, the landlord's Counsel sought for 7 days to file a response and formal application for payment of rent arrears against the tenants. The same was granted and the matter was therefore fixed for mention on 7th June 2024.
8. Through a motion dated 5th June 2024, the landlord moved this Tribunal seeking for an order directing and/or compelling the tenants to pay accrued rent arrears from the month of January 2021 to June 2024 amounting to Kshs 274,600/=. She also sought for leave to issue a termination notice to the tenants on the grounds that they have consistently and persistently failed to pay rent without sufficient cause.
9. The application is supported by the 3rd respondent's/agent's affidavit of even date in which he deposes that the tenants had accumulated rent arrears amounting Kshs 274,600/= as per the tabulation marked JG-1. Despite several demands and notices, the tenants are accused of failing and neglecting to settle the arrears.
10. In response to the application, the 1st tenant filed a replying affidavit sworn on 17th July 2024 on his behalf and that of the 2nd tenant wherein he deposes that owing to Covid-19 pandemic economic slow-down and harsh economic times, they agreed with the landlord that they vacate Unit No. 9 on 4th Floor as they clear the rent balance that was due.
11. It is deposed that as a sign of commitment to clearing the rent arrears, the tenants issued a bankers' cheque for Kshs 50,000/= to the landlord but the same was declined and instead a demand for full payment of the balance was made. A copy of the cheque is attached as annexure EMM2. The 1st tenant further deposes that he has approached the landlord several times in vain to record a consent on how to clear the balance over time. He deposes that he was able to clear the balance within 90 days but the landlord was hellbent to evict them from the suit premises.
12. On 7th June 2024, the application dated 5th June 2024 was fixed for hearing on 1st July 2024. However, on the subsequent date, the tenant sought for time to respond thereto and was granted 14 days to do so. Both applications were directed to be disposed of together. The matter was therefore fixed for mention on 17th July 2024.
13. On 17th July 2024, the two applications were directed to be disposed of by way of written submissions with each party taking 14 days and the tenant starting. The matter was therefore fixed for mention on 15th August 2024 to confirm compliance with the directions. However, by 15th August 2024, only the respondents had filed their submissions and the tenant's Counsel indicated that she would file her submissions by close of business on the same day. The matter was therefore fixed for ruling.



B. Issues for determination

14. The following issues arise for determination.
 - a. Whether the tenants are entitled to the reliefs sought in their reference and application dated 28th February 2024.
 - b. Whether the landlord is entitled to the reliefs sought in the application dated 5th June 2024
 - c. Who shall bear the costs of both applications?

Issue (a) Whether the tenants are entitled to the reliefs sought in their reference and application dated 28th February 2024

15. The tenants/applicants moved this Tribunal vide a Reference dated 28th February 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 locked them out of the suit premises without justifiable reasons yet they had been paying rent without fail.
16. The tenants/applicants simultaneously filed a notice of motion dated 28th February 2024 under certificate of urgency seeking for restraining orders against the Respondents, their agents, servants or anyone acting on their behalf from interfering with their occupation of the suit premises. They also sought for a mandatory order compelling the respondents to reopen and restore their full access to the business premises pending the hearing of the case and that the OCS, Ruiru Police Station ensuring compliance with the orders.
17. Although the 1st tenant deposes in his supporting affidavit that they have faithfully fulfilled their obligations under the tenancy agreement by paying rent, he has admitted in his replying affidavit sworn on 17th July 2024 that there were arrears outstanding. He further states that he attempted to pay Kshs 50,000/= vide the bankers' cheque marked EMM2 but the landlord declined insisting on payment of the whole balance.
18. 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”.
19. In the instant case, the 3rd respondent/agent has sworn an affidavit stating that the tenants were indebted to the landlord in the sum of Kshs 274,600/= as at June 2024. The tenants did not dispute the said tabulation of the amount owing.
20. Having failed to pay rent as and when the same fell due and payable, the tenants are not entitled to the equitable remedy of injunction against the respondents. The interim orders of injunction issued herein were given after they misrepresented facts by alleging that they had faithfully paid rent to the landlord in full and the same ought to be discharged.



Issue (b) Whether the landlord is entitled to the reliefs sought in the application dated 5th June 2024.

21. Through a motion dated 5th June 2024, the landlord moved this Tribunal seeking for an order directing and/or compelling the tenants to pay accrued rent arrears from the month of January 2021 to June 2024 amounting to Kshs 274,600/=. She also sought for leave to issue a termination notice to the tenants on the grounds that they have consistently and persistently failed to pay rent without sufficient cause.
22. The application is supported by the 3rd respondent's/agent's affidavit of even date in which he deposes that the tenants had accumulated rent arrears amounting to Kshs 274,600/= as per the tabulation marked JG-1. Despite several demands and notices, the tenants are accused of failing and neglecting to settle the arrears.
23. In response to the application, the 1st tenant filed a replying affidavit sworn on 17th July 2024 on his own behalf and that of the 2nd tenant wherein he deposes that owing to Covid-19 pandemic economic slow-down and harsh economic times, they agreed with the landlord that they vacate Unit No. 9 on 4th Floor as they clear the rent balance that was due.
24. It is deposed that as a sign of commitment to clearing the rent arrears, the tenants issued a bankers' cheque for Kshs 50,000/= to the landlord but the same was declined and instead a demand for full payment of the balance was made. A copy of the cheque is attached as annexure EMM2. The 1st tenant further deposes that he has approached the landlord several times in vain to record a consent on how to clear the balance over time. He deposes that he was able to clear the balance within 90 days but the landlord was hellbent to evict them from the suit premises.
25. It is clear that despite their admission of indebtedness to the landlord, the tenants have not made any efforts to clear their rent arrears in the pendency of this case. The sum of Kshs 50,000/= which they claim to have been declined by the 1st respondent has not been deposited with the Tribunal as a show of good faith. We therefore have no reason to deny the 1st respondent the reliefs sought in her application dated 5th June 2024.

Issue (d) Who shall bear the costs of both applications?

26. 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 respondents being the successful parties.

C. Orders

27. Given the above analysis, the final orders which commend to us are;
 - a. The tenants' application dated 28th February 2024 is hereby dismissed with costs and the interim orders are hereby discharged.
 - b. The landlord's application dated 5th June 2024 is hereby allowed with costs.
 - c. The respondents' costs are assessed at Kshs.30,000/=.It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH SEPTEMBER 2024

HON. GAKUHI CHEGE - (PANEL CHAIRPERSON)



BUSINESS PREMISES RENT TRIBUNAL

HON JOYCE A OSODO - (MEMBER)

In the presence of:

Miss Kabinu for the tenants

No appearance for the respondents

