



Ndar v Waruga (Tribunal Case E260 of 2023) [2023] KEBPRT 1312 (KLR) (9 June 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1312 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E260 OF 2023
CN MUGAMBI, CHAIR
JUNE 9, 2023

BETWEEN

JAMES OUMA NDAR TENANT

AND

DANIEL WARUGA LANDLORD

RULING

1. The Tenants application dated 9.3.2023 seeks an order that the Respondent be ordered to open the suit premises, and allow the tenant access therein failing which the tenant is to break in with the assistance of the OCS, Mwiki police station. The tenant has also sought orders restraining the landlord/ Respondent from in any manner whatsoever interfering with the tenant's quiet occupation and the lawful enjoyment of the suit premises at Githurai 45. Police assistance has also been sought.
2. The Applicant has deponed in his affidavit that he pays a monthly rent of Kshs. 9,000/= for the suit premises owned by the landlord.
3. The tenant has also deponed that the Respondent has closed the suit premises while the tenant only owed rent for the month of February and that further, the landlord has threatened to evict the tenant.
4. On 17.3.2023, the Tribunal issued orders directing the landlord to open the suit premises failing which the tenant would be allowed to break into the same with the assistance of the police.
5. On 20.4.2023, the landlord confirmed to court that he would release the tenants tools and open the suit premises. The tenant was then ordered to pay the rent he admitted of Kshs. 31,000/= before 30.5.2023. On the said date, the tenant appeared in court in the absence of the landlord and informed the court that he had not paid to the landlord the sum of Kshs. 31,000/= as ordered.
6. Clearly, the tenant has admitted to being in rent arrears, he cannot therefore be said to be deserving orders of injunction. on the other hand, the landlord's seizure of the tenant's tools of trade and the



failure to release them to the tenant is clearly illegal as it does not seem to have followed any clear procedure for distress for rent.

7. Consequently, I will reiterate the orders made on 20.4.2023 and order that:-
 - a. The landlord is to release the tenant's tools of trade unconditionally.
 - b. The tenant will pay to the landlord all outstanding rent arrears failing which the landlord will be at liberty to levy distress for rent at the expiry of thirty (30) days from the date hereof.
 - c. Each party will bear its own costs.

RULING DATED, SIGNED AND DELIVERED THIS 9TH DAY OF JUNE 2023.

HON. CYPRIAN MUGAMBI

CHAIRMAN

9.6.2023

