



**Mbaka v Dinle (Tribunal Case E102 of 2023)
[2023] KEBPRT 1220 (KLR) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1220 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E102 OF 2023
CN MUGAMBI, CHAIR
JUNE 22, 2023**

BETWEEN

TERESIA MWENDE MBAKA TENANT

AND

ALI DINLE LANDLORD

RULING

Introduction

1. The tenant's notice of motion dated April 27, 2023 seeks orders compelling the landlord to re-open the suit premises, an order restraining the landlord from in any manner interfering with the Applicant's tenancy over the suit premises and an order that the landlord compensates the tenant for losses incurred during the period when the subject premises was closed.

The Tenant's deposition

2. The tenant has filed an affidavit in support of her application sworn on 27.4.2023 wherein she has deposed that she is a tenant in the suit premises paying Kshs. 13,000= per month.
3. The tenant has further deposed that on April 13, 2023, the landlord locked the suit premises denying the tenant access therein and exposing the tenant to immense losses.
4. The tenant further deposes that the landlord has not issued her with any notice of termination of the tenancy as required under the provisions of Cap 301 of the Laws of Kenya and the actions of the landlord are therefore illegal and unjustifiable.



The landlord's depositions

5. The landlord has filed a replying affidavit sworn on May 8, 2023 wherein he has deponed that the tenant pays a monthly rent of Kshs. 13,000/= and is presently in rent arrears amounting to Kshs. 81,000/= being rent unpaid for a period of seven (7) months.
6. The landlord has further deponed that the tenant has not paid her electricity bills and they have now accumulated to a total of Kshs. 28,760/=.
7. It has been further deponed that the tenant is still in occupation of the premises part of which she has turned into a dwelling house.
8. The landlord further seeks termination of the tenancy on the grounds of non-payment of rent amongst other breaches of the tenancy agreement between the parties.

Analysis and determination

9. The only issue that arises for determination in this application is whether the tenant is entitled to the orders sought in her application dated April 27, 2023.
10. On May 3, 2023, the Tribunal issued an order to the landlord to re-open the suit premises, the tenant was also granted the liberty to break into the suit premises and therein gain access with the assistance of the area chief and/or the OCS Mikindani police station. On May 10, 2023, when the matter came up for hearing, Counsel for the landlord informed the court that the landlord had complied with the court orders, that the tenant had refused to take the keys to the suit premises and that further she was free to access the premises. Counsel informed the court that he was not aware of any reason why the tenant had declined to take up the premises.
11. The landlord does not deny locking up the premises in the first place. Clearly, the action by the landlord was illegal as it was not executed pursuant to any lawful court order. The landlord does not seem to have been levying distress for rent either and in the circumstances, I do find the locking of the tenant's business premises to have been an illegal attempt to terminate the tenancy herein. In the same vein, I do note that upon the issuance of the orders to re-open the premises, the landlord dutifully obeyed the same by availing the keys to the premises to the tenant who, for her own reasons declined to take up the same.
12. The landlord has stated that the tenant owes rent for seven months and has also never settled her electricity bills. The tenant has not challenged these averments by the landlord and I do find on a balance of probabilities that indeed the tenant owes rent and has not settled her electricity bill. In this regard, the tenant is in breach of her fundamental obligation to pay rent to the landlord and is not deserving of the equitable reliefs that she seeks against the landlord.
13. The tenant has made a claim that the landlord compensates her for the losses incurred while the premises remained closed. I do note that the tenant has not provided any particulars for this claim.
14. The landlord's request for termination of the tenancy herein by way of his replying affidavit cannot also succeed as it would be in violation of the provisions of Section 4(2) of [Cap 301](#). If the landlord is desirous of terminating the tenancy between himself and the tenant herein, all he needs to do is to comply with the requirements of Section 4 of [Cap 301](#) which are mandatory in nature.
15. In view of the fact that I have found that the locking of the suit premises was illegal, that the tenant is still in occupation of the premises and that the tenant is in rent arrears and has also not settled her electricity bill, I hereby make the following orders;-



- a. That the landlord shall re-open the suit premises and allow the tenant access therein, failing which the tenant shall be at liberty to break into the same and therein gain access with the assistance of the OCS Mikindani police station.
- b. The tenant shall pay all the outstanding rent arrears and electricity bill within the next sixty (60) days failing which the landlord shall be at liberty to levy distress for the said rent arrears.
- c. The tenant will bear the costs of this application and the reference assessed at Kshs. 25,000/=.
- d. The reference by the tenant is determined in the above terms.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF JUNE 2023

HON. CYPRINA MUGAMBI

CHAIRPERSON

22.6.2023

In the presence of;

Mr. Kutura for the landlord

In the absence of the tenant

