



**Ouma v Kamwaro & another (Tribunal Case E327 of 2023)
[2023] KEBPRT 656 (KLR) (Civ) (6 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 656 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E327 OF 2023
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
OCTOBER 6, 2023**

BETWEEN

CHARLES OCHIENG OUMA TENANT

AND

MARY KAMWARO 1ST RESPONDENT

PATRICK WAWERU 2ND RESPONDENT

RULING

1. The tenant moved this Tribunal by a complaint dated 23rd March 2023 claiming that the landlord had verbally demanded him to vacate from his business premises without prior notice in the prescribed form, a court order or justifiable cause contrary to Cap. 301, Laws of Kenya.
2. The tenant contends that he has heavily invested in the said business premises and moving out will deny him the opportunity to recover and/or make profit from the investment. He further avers that he is not financially, psychologically and emotionally ready to vacate from the said premises which would require months of planning and that the Respondent's actions were intended to ensure that he is unable to file a reference under Section 6(1) of Cap. 301, Laws of Kenya.
3. The tenant concurrently filed a motion of even date seeking for injunction orders against the Respondents from interfering with his tenancy in the suit premises at Kayole. The said application is predicated upon the same grounds as the complaint and is supported by his affidavit sworn on even date.
4. The application is opposed through the affidavit of 1st Respondent sworn on 27th June 2023 in which it is deposed that the tenant owed Kshs.47,000/- in rent arrears as at January 2022 in respect of the year 2021. A report was made to the Chief's office and upon being summoned on 7th May 2022, he



- paid Kshs.30,000/- via Mpesa and Kshs.20,000/- in cash being part arrears as per annexure marked “SSW-1”.
5. On 28th July 2022, the tenant paid Kshs.40,000/- in cash to the 2nd Respondent as part of previous rent arrears. On 5th September 2022, he paid Kshs.10,000/- in cash to the 2nd Respondent. On 28th October 2022, he paid a further sum of Kshs.36,000/- via Mpesa to the Respondent in terms of annexure marked “SSW-2”.
 6. The tenant went into slumber until January 2023 when the Respondents demanded payment and he paid Kshs.78,000/- in cash to the 1st Respondent and Kshs.2000/- via Mpesa to the 2nd Respondent. As at June 2023, the rent arrears stood at Kshs.159,000/- as tabulated in the schedule attached to the replying affidavit.
 7. The 1st Respondent denies threatening the tenant with eviction from the suit premises and that he was only using the excuse to avoid meeting his obligations as a tenant.
 8. The 1st Respondent moved this Tribunal vide an application dated 10th May 2023 seeking that the orders given on 30th March 2023 be stayed, varied and/or set aside. She also seeks for an order compelling the tenant to clear the outstanding rent arrears and in default, the Landlord be at liberty to distress for rent. She also seeks for an order for vacant possession through eviction and that the OCS, Kayole Police Station to ensure compliance.
 9. The Landlord annexes an agreement dated 27th February 2023 in which the tenant admitted owing a sum of Kshs.168,000/- inclusive of March and April 2023.
 10. The tenant filed a replying affidavit sworn on 13th July 2023 in opposition to the landlord’s application. He disputes the agreements entered into with the landlord in which he committed to pay the admitted arrears.
 11. I am required to determine the following issues:-
 - a. Whether the tenant is entitled to the reliefs sought in the application dated 23/3/2023 and the complaint of even date.
 - b. Whether the landlord is entitled to reliefs sought in the application dated 10th May, 2023.
 - c. Who is liable to pay costs of the suit?.
 12. It is not in dispute that the tenant runs a school known as City Care learning centre in the suit premises owned by the 1st Respondent at a monthly rent of Kshs.21,000/-.
 13. Although the tenant claims to have been issued with a verbal notice to vacate from the suit premises by the 1st Respondent on an unspecified date, no evidence of such notice has been exhibited.
 14. The Tenant has not responded to the landlord’s contention that he defaulted in pay rent of rent on various dates leading to being summoned before the chief on the said issue where an agreement for Kshs.168,000/- was entered into. Although he claims that the agreement was entered into under coercion, no evidence of such coercion has been adduced. We are not convinced that the agreement is vitiated by the claims of the tenant which are not substantiated.
 15. We hold the view that the tenant has failed to demonstrate that he has paid the amount claimed by the landlord as rent arrears. As such, he failed to bring himself within the principles for the grant of an injunction. He has not come to this Tribunal with clean hands and is thus disentitled to any equitable remedies.



16. On the other hand, the landlord has demonstrated through empirical evidence that the tenant owes rent to her and in absence of any evidence from the tenant to show that the amount claimed is not owing, we hold the view that the landlord is entitled to levy distress against the tenant under section 3(1) of [cap. 293](#), Laws of Kenya.
17. In regard to the prayer for vacant possession, the landlord has not exhibited any notice served upon the tenant under section 4(2) of [cap. 301](#), Laws of Kenya for termination of the tenant's tenancy and this Tribunal cannot therefore make an order for vacant possession.
18. In regard to costs, the same are in this Tribunal's discretion under section 12(1) of [cap. 301](#), Laws of Kenya. The tenant came to this Tribunal knowing that he was in rent arrears and therefore lacked a cause of action enforceable against the Respondents. Having failed to demonstrate such cause of action, he is liable to pay costs of the complaint, his application and that of the 1st Respondent/Landlord.
19. In conclusion, the final orders which commend to us in this matter under section 12(4) of [cap. 301](#), Laws of Kenya are that:-
 - a. The tenant's complaint dated 23rd March 2023 and the application of even date is dismissed with costs to the Respondents.
 - b. The landlord's/1st Respondent's application dated 10th May, 2023 is allowed in terms of prayers 2,3 and 5 plus costs.
 - c. The Respondents' costs are assessed at Kshs.25,000/- against the Tenant.

It is so ordered.

RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 6TH DAY OF OCTOBER 2023.

SIGNED

HON. GAKUHI CHEGE

PANEL CHAIR PERSON

SIGNED

HON. JOYCE OSODO

PANEL MEMBER

BUSINESS PREMISES RENT TRIBUNAL

In the presence of :

Tenant in person

No appearance for the Respondent

