



**Maingi v Odhiambo (Tribunal Case E269 of 2023)
[2024] KEBPRT 370 (KLR) (22 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 370 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E269 OF 2023
CN MUGAMBI, CHAIR, N WAHOME & JOYCE MURIGI, MEMBERS
MARCH 22, 2024**

BETWEEN

GLADYS WANGRI MAINGI TENANT

AND

DORINE ODHIAMBO LANDLORD

RULING

Introduction

1. The Tenant's notice of motion dated November 2, 2023 seeks orders that the landlord be compelled to clear outstanding electricity bill amounting to Kshs. 29,000/= and that further the landlord be restrained from in any manner whatsoever interfering with the Applicant's quiet enjoyment of the suit premises. costs of the Application and the assistance of the OCS Nyali police station has also been sought in the Application.

The Tenant's Depositions

2. The Tenant's affidavit in support of her Application and her further affidavit may both be summarized as follows hereunder;-
 - a. That the Tenant operates the business of a gym, barber shop and spa in the suit premises.
 - b. That the landlord has refused to clear electricity bill amounting to Kshs. 29,000/= as a consequence of which Kenya Power & Lighting Company Ltd (hereinafter KPLC) disconnected the power supply in July 2023.
 - c. That the landlord is threatening to evict the tenant.
 - d. That it is not true that the tenant was supplied with electricity through account No. 39064613 or that she used to pay for power through the said account.



- e. That after the pre-paid meter in the suit premises were taken away by KPLC, the Tenant switched to meter box number 39064613 which is shared by other Tenants and controlled by the landlord.
- f. That before the Tenant switched to the new line, it had arrears of Kshs. 29,000/= which the landlord required the Tenant to pay and to which the tenant objected.

The Landlord's depositions

- 3. The Respondent's/Landlord's replying affidavit may be summarized as follows:-
 - a. That the tenant runs the business of a barber shop and spa in the suit premises.
 - b. That the premises let by the Tenant is supplied by a separate electricity meter account No. 39064613 and the Tenant is responsible for the payment of the electricity consumed by her to KPLC.
 - c. That the landlord has never demanded for the payment of Kshs. 29,000/= from the Tenant on account of the electricity bill.
 - d. That on November 17, 2023, the landlord received a message from KPLC that the aforesaid electricity account had arrears of Kshs. 21,845.25/= which was due and payable.
 - e. That the landlord has not threatened the tenant as it is actually the tenant who on August 18, 2023 wrote to the landlord stating that she would not pay rent for three months and that she would vacate the premises.
 - f. That as at December 2023, the tenant was in rent arrears amounting to Kshs. 100,000/=.
- 4. The landlord has also filed an Application dated December 1, 2023 wherein he has sought that the ex parte orders issued by the Tribunal on November 8, 2023 be set aside. The landlord has relied on the affidavit summarized under paragraph 3 above in support of her Application dated December 1, 2023. the Replying affidavit and the further affidavit in relation to the Application dated November 8, 2023 raise more or less the same issues raised in the affidavits in support of and against the Tenant's Application dated 2.11.2023. where relevant, I will consider the depositions in those affidavits in the ruling in this matter.

Analysis and determination

- 5. The issues that arise for determination in both Applications are the following:-
 - a. Whether the Tenant is entitled to the orders sought in her Application.
 - b. Whether the landlord is entitled to the orders sought in her Application dated December 1, 2023.
 - c. What orders ought to be issued in the circumstances.

Issue A: Whether the Tenant is entitled to the orders sought in her Application

- 6. The dispute in this matter revolves around the question on who should pay the outstanding KPLC bill of Kshs. 29,000/= or Kshs. 21,845/= for account No. 39064613 between the Tenant and the landlord. There is no information on when the Tenant took possession of the premises and when or after how long she switched to the supply of electricity from the meter box. Equally, it is not clear when the KPLC took away the tokens the Tenant was using. Without the benefit of these timelines, it is difficult



to ascertain whether the account No. 39064613 had any arrears before the Tenant started using it and how much was the arrears. There have also been allegations by the Tenant that the aforesaid account serves other Tenants which would then mean that if KPLC disconnected the power supply for the said account, then it did so for all the Tenants using the said account. None of the other said Tenants has sworn any affidavit in support of the Tenants assertion and neither has the landlord also denied the Applicant's assertion. It is not possible at this stage therefore to tell whether indeed the Tenant uses the account alone or together with other alleged Tenants.

7. It is also not possible to tell at this stage whether the landlord is responsible for the payment of the electricity consumed by the Tenant in the premises. If the Tenant was using the tokens earlier to procure her electricity, was the landlord paying for the same, and if the landlord was not paying, then why would the landlord start paying for the power consumed by the Tenant once the Tenant switched to the account with a postpaid meter?
8. On the basis of the material placed before the Tribunal, I am not convinced at this stage of these proceedings that the landlord ought to be compelled to pay for the electricity as demanded by the Tenant as this issue can only be unraveled at a full hearing of the Tenant's Reference.
9. I do not find any merits in the Application by the Tenant and the same is dismissed with costs to the landlord.

Issue B: Whether the landlord is entitled to the orders sought in her Application dated December 1, 2023; and Issue C: What orders ought to be issued in the circumstances.

10. The issues in B & C above have been dealt with by the findings above. The Tenant's Application having been dismissed, it goes without saying that the orders stand vacated. The parties are ordered to take a date on a priority basis for the hearing of the Reference.

**DELIVERED VIRTUALLY BY HON. NDEGWA WAHOME, MBS AND HON. JOYCE MURIGI
THIS 22ND DAY OF MARCH, 2024.**

HON. CYPRIAN MUGAMBI - CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

HON. NDEGWA - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

HON. JOYCE MURIGI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the absence of the parties.

