



James Wasonga Ouma t/a The Black Comb v Ntuntu & another (Tribunal Case E1079 of 2022) [2023] KEBPRT 80 (KLR) (17 March 2023) (Ruling)

Neutral citation: [2023] KEBPRT 80 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1079 OF 2022
GAKUHI CHEGE, VICE CHAIR
MARCH 17, 2023**

BETWEEN

JAMES WASONGA OUMA T/A THE BLACK COMB TENANT

AND

LYDIA NTUNTU 1ST RESPONDENT

FRANCIS OCHIENG ODWOUR 2ND RESPONDENT

RULING

1. The parties herein entered into a lease agreement on March 5, 2022 in respect of the suit premises situate at Sinkeet Arcade, Kitengela Town otherwise known as 'Black Comb' for a period of two years at an agreed rent of Kshs 35,000/- per month exclusive of VAT.
2. The tenant avers that he paid rent regularly in terms of the lease agreement but the Respondents on several occasions interfered with his tenancy by disconnecting electricity, by chasing clients away and locking the business premises with a view to stopping the business without any valid cause.
3. On November 18, 2022, the tenant received a letter from the Respondents demanding that he vacates from the business premises by close of business on the same day at 1700 hours. The notice is marked 'JWO-4'. It is the said notice and the constant harassment which prompted the tenant to file the instant complaint dated November 18, 2022 and the application of even date.
4. Interim orders were issued on November 21, 2022 and the matter was directed to be heard inter-partes on December 20, 2022.
5. In his replying affidavit sworn on January 6, 2022, the 2nd Respondent/agent denies the allegations made by the tenant but admits issuing the notice dated November 18, 2022 stating that the tenant was always making late payment past the deadline without explanation.



6. The 2nd Respondent denies allegations of obstruction or blocking of the tenant's business and deposes that the letter aforesaid was issued to him towards the end of his deposit period on October 25, 2022 after he visited the office and indicated that he had found another place to relocate the business and needed time to do so.
7. According to the 2nd Respondent, the tenant was supposed to vacate by end of October 2022 when his tenancy expired and the landlady had allowed him to sit on the deposit for the months of September and October 2022. The tenant owed Kshs 25,000/- in rent arrears for the month of November 2022 after his stay was extended by the landlady.
8. According to the 2nd Respondent, the tenant was hiding behind the law although his hands were tainted by dishonesty as he had committed himself to an agreement and expressed intention of exiting the tenancy arrangement but turned around after getting an extension of one (1) month to do so.
9. The tenant filed a supplementary affidavit sworn on December 19, 2022 in which it is deposed that soon after service of the Tribunal's orders and pleadings, the agent proceeded to issue a fresh illegal notice to vacate dated November 21, 2022 on the grounds that the Landlady had found another tenant for the business premises. The notice is marked 'JWO-2' and was pinned on the walls and door of the suit premises.
10. According to the tenant, the three days notice to vacate issued by the Respondents on November 21, 2022 is untenable in law. The said actions had damaged the business reputation of the Applicant and as a result, he had lost customers.
11. On December 10, 2022, the landlady pinned another notice to vacate on the premises doors and exterior walls demanding the tenant's exit. The tenant deposes that the notices are illegal and defective.
12. I am required to determine the following issues:-
 - (a) Whether the notices served upon the tenant are valid or not.
 - (b) Whether the tenant's complaint and application dated November 18, 2022 are merited.
 - (c) Who is liable to pay costs of the case?.
13. Section 4 (2) of Cap 301, Laws of Kenya provides as follows:-

' (2) A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under such a tenancy shall give notice in that behalf to the tenant in the prescribed form'.
14. Regulation 4(1) of the *Landlord and Tenant (shops, Hotels and Catering Establishments) (Tribunal) (forms and procedure) Regulations, 1966* provides as follows:-

' (1) A notice under Section 4(2) of the Act shall be in Form A in the schedule to these Regulations'.
15. I have looked at the notices dated November 18, 2022, November 21, 2022 and December 10, 2022 served by the landlord upon the tenant and none of them is in the prescribed form or in compliance with Section 4 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301 Laws of Kenya. To that extent, the said notices are null and void and incapable of terminating the Applicant's tenancy.



16. The Respondents contend that the tenant had agreed to vacate from the suit premises by October 31, 2022 and in that regard had utilized his rent deposit towards rent for the months of September and October 2022. No written agreement has been annexed to the replying affidavit to prove this allegation despite the denial by the tenant of existence of such an agreement. The Respondents had a duty to prove the same by dint of Sections 107 and 108 of the Evidence Act, Cap 80 Laws of Kenya. In absence of such evidence, this Tribunal is unable to believe their narrative and shall protect the tenant from any interference with his quiet possession and use of the suit premises.
17. In view of the foregoing analysis, I am satisfied that the tenant has established the principles espoused in the case of *Giella – vs- Cassman Brown & Co Ltd (1973) EA 358* and unless the injunction orders sought are granted there is a real danger that the tenant shall be evicted from the suit premises given the number of notices to vacate already served. This will defeat the very purpose for which this Tribunal was established by the legislature.
18. In regard to costs, the same are in the Tribunal's discretion under Section 12(1) (k) of Cap 301, Laws of Kenya but always follow the event unless for good reasons otherwise ordered. I have no reason to deny the tenant costs of the reference.
19. Section 12(4) of Cap. 301, Laws of Kenya provides for one of the powers of this Tribunal in the following terms:-

' (4) In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant and make such order thereon as it deems fit'.

16. In the premises, the final orders which commend to me in this matter in respect of the application and reference dated November 18, 2022 are:
- (a) The application dated November 18, 2022 and reference is allowed with costs.
 - (b) The Respondents are hereby restrained from evicting, closing, disconnecting electricity and water supply or in any other manner interfering with the tenant's quiet use and possession of the business premises known as 'The Black Comb' situate at Sinkeet Arcade, Kitengela Township, Kajiado County without adhering to the provisions of the Landlord and Tenant (Shops, Hotels and Catering Establishments Act, Cap 301, Laws of Kenya.
 - (c) The notices dated November 18, 2022, November 21, 2022 and December 10, 2022 are declared invalid and are hereby set aside.
 - (d) The Landlord is directed to accept monthly rent in respect of the tenant's business premises forthwith and in default the same shall be deposited with this Tribunal on monthly basis.
 - (e) The OCS, Kitengela Police station shall ensure compliance with the orders given herein.
 - (f) The tenant is awarded costs of Kshs 25,000/- to be deducted from the rent payable to the landlord.

It is so ordered.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 17TH DAY OF MARCH 2023.

HON. GAKUHI CHEGE

VICE CHAIR



BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of:

Odhiambo for the Tenant

Oduor Francis for the Landlord

