



**Wanjiru v Kamau & 3 others (Tribunal Case E814 of 2022)
[2023] KEBPRT 654 (KLR) (14 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 654 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E814 OF 2022
GAKUHI CHEGE, CHAIR
JULY 14, 2023**

BETWEEN

JACQUELINE WANJIRU TENANT

AND

ANTONY KAMAU 1ST RESPONDENT

REDSEA TRANSPORTERS 2ND RESPONDENT

CATHERINE NYAKAREMBA 3RD RESPONDENT

SABINA MAINA 4TH RESPONDENT

RULING

1. The tenant moved this Tribunal by way of a complaint dated September 12, 2022 made pursuant to section 12(4) of [Cap 301](#), Laws of Kenya claiming that the respondents had broken into her business premises on June 12, 2022 and carried away her tools of trade contrary to the said Act.
2. She simultaneously filed a motion of even date seeking orders for reopening of the business premises and in default she be allowed to break the locks to gain access under supervision of the OCS Kitengela Police Station. She also seeks for an order to restrain the respondents from increasing monthly rent from Kshs.3,500/- to Kshs.4,500/- pending hearing and determination of the case.
3. The tenant further seeks for an order allowing her unlimited access to the business premises pending hearing and determination of the case. Prayer 5 is for release of the tenant's tools of trade immediately and unconditionally pending hearing and determination of the case.
4. Prayer 6 is for restraining orders from interference with the tenant's quiet enjoyment of the business premises. Prayer 8 seeks for compensation for all the goods and items maliciously damaged as well as loss of business plus costs of the suit.



5. The tenant deposes that she has been a tenant in the suit premises from June 2020 paying a monthly rent of Kshs.3,500/- which the respondents illegally increased to Kshs.4,500/-.
6. On June 12, 2022, the respondents are said to have locked the business premises through welding thereby denying the tenant access without any justifiable reasons. She accuses the respondents of breaking into the business premises and confiscating her tools of trade and threatening to evict her. A list of the tools of trade alleged to have been confiscated is attached as annexure “JW-1”.
7. Interim orders were granted *ex-parte* in terms of prayers 1,2 and 3 pending hearing inter-partes on October 25, 2022.
8. On November 7, 2022, the application was allowed in absence of the respondents who had been duly served in terms of the Affidavit of service filed herein stating that the matter was due for hearing on October 25, 2022.
9. The 4th respondent filed a replying affidavit sworn on February 7, 2023 wherein she deposes that she was not aware of the hearing date nor the application scheduled for hearing on October 25, 2022.
10. She denies being the caretaker of the suit premises and deposes that having helped the 3rd respondent to clean it, she was allowed to live therein “rent free”. She was therefore not connected nor involved in the tenant’s eviction or hand. She denies participating in the tenant’s eviction or confiscation of her property.
11. She deposes that she is incapable of complying with the Tribunal orders as she was not a caretaker or employee of the landlord neither did she evict the tenant. She was no longer a tenant in the premises. She therefore seeks for setting aside or discharge of the Tribunal orders in the interest of justice through her replying affidavit.
12. The 3rd respondent also filed a Replying Affidavit sworn on February 27, 2023 wherein she deposes that the application dated September 12, 2022 was never served upon her. She only came to learn about it after being arrested by OCS, Kitengela Police Station. She denies being an agent of the landlord/1st Respondent stating that she was wrongly enjoined in this suit.
13. The 3rd respondent deposes that she was not the owner of the business premises neither was she employed by the 1st respondent/landlord. She denies having been present on June 12, 2022 when the tenant’s goods were allegedly confiscated. The said goods existence and value of Kshs.270,000/- have not been proved according to her.
14. I note that the orders of November 7, 2022 disposed of the complaint and the application dated September 12, 2022 with finality. I have not seen any application to vary, rescind or set aside the said orders under section 12(1) (i) of [Cap 301](#), Laws of Kenya.
15. As such, the issues raised in the submissions filed by the respondents’ counsel do not arise for determination in absence of such an application. The issue of service of the application pursuant to which the orders of November 7, 2022 were made can only be addressed in an application for setting aside the same.
16. As regards the tenant’s submissions, I note that this Tribunal’s orders are supposed to be filed before the Subordinate Court under section 14(1) of [Cap. 301](#) Laws of Kenya for purposes of execution. The Tribunal is not self executing and as such, no further proceedings ought to have been taken by the tenant in this matter in respect of enforcement of the said orders.



17. In the premises, I find and hold that this Tribunal is *functus officio* in respect of all the issues raised by the parties herein in both the Replying Affidavits and submissions filed herein.

I direct that this matter be and is hereby marked as closed.

RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 14TH DAY OF JULY 2023.

HON. GAKUHI CHEGE

FOR: CHAIRMAN

BUSINESS PREMISES RENT TRIBUNAL

