



**Cherangani Investment Company Limited v Mwangi (Tribunal Case
E046 of 2023) [2023] KEBPRT 725 (KLR) (8 August 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 725 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E046 OF 2023
GAKUHI CHEGE, VICE CHAIR
AUGUST 8, 2023**

BETWEEN

CHERANGANI INVESTMENT COMPANY LIMITED TENANT

AND

HELLEN WANGARI MWANGI LANDLADY

RULING

1. Through a complaint dated 9th March 2023, the landlord moved this Tribunal complaining against the tenant about non-payment of rent and seeking for payment of rent arrears in the sum of Kshs.106,600/-. It also seeks for vacant possession and eviction orders in respect of business premises situate on L.R No. Kitale Municipality 2116/29/V.
2. The Landlord also filed a motion of even date seeking an order to compel the tenant to pay the said sum of Kshs.106,600/- as at 5th February 2023. It further seeks for an order directing the Respondents to vacate the suit premises on or before 1/4/2023 and in default she be forcefully evicted and the OCS, Kitale Police Station to provide security.
3. The application was directed to be served for hearing inter-partes on 10th March 2023.
4. Upon being served, the tenant filed a replying affidavit opposing the complaint and the application dated 9th March 2023 wherein she questions the capacity of Manaseh Nyaga Njenga to file pleadings in this case on behalf of the landlord. She further contends that there was a pending case vide Kitale ELC No. 74 of 2019 in respect of the suit property where orders for payment of rent in a joint account of the plaintiff's advocate and 7th defendant therein were being sought. The matter was said to be pending for ruling.
5. The tenant claims to have been paying rent until the applicant broke into her shop and carted away her goods while she was away in an act of breaking and stealing which is criminal.



6. Upon reporting the matter to the police, they conducted stock taking and found most of the tenant's properties valued at Kshs.1,427,000/- missing as evidenced by annexures marked "HW-2(a) (b), and (c).
7. The landlord filed a supplementary affidavit sworn by Manaseh Nyaga Njenga on 23rd May 2023 in response to the issues raised in the replying affidavit. I shall refer to the said affidavit while dealing with the issues for determination.
8. On 24th April 2023, parties were directed to file and exchange written submissions but only the landlord's counsel complied. I shall advert to the submissions later in this ruling.
9. The issues for determination in this case are:-
 - a. Whether manasse Nyaga Njenga has the requisite legal capacity to plead on behalf of the Landlord.
 - b. Whethr the landlord is entitled to the reliefs sought in the complaint and application dated 9th March 2023.
 - c. Who is liable to pay costs?
10. The landlord is a limited liability Company incorporated under the provisions of the [companies Act](#) 2015. According to CR 12 of the Company marked "MNN 1"(b) annexed to the supplementary affidavit, Manasse Nyaga Njenga the deponent thereof is a director shareholder thereof. Annexure "MNN1(a) states that the said director is duly authorized to sign all legal documents of the Company. I therefore find and hold that he had the legal capacity to institute the proceedings herein.
11. In regard to whether the landlord is entitled to the reliefs sought in the complaint and application dated 9th March 2023, the landlord's director deposes that the Company owns L.R No. Kitale Municipality Block 4/494 on which the Respondent is a tenant.
12. The tenant is alleged to owe a sum of Kshs.106,600/- as at 6th February 2023 in rent arrears. A lease agreement marked "MNN1 and a rent payment record marked "MNN2" are attached to prove the same.
13. The landlord also annexes a demand letter dated 5/1/2023 marked "MNN3" for a sum of Kshs. 60,200/-. It is on the basis of non-payment of rent that the landlord seeks vacant possession.
14. Instead of demonstrating how she has been performing her obligations under the tenancy agreement, the tenant has sworn a replying affidavit alleging that the landlord broke into and stole properties from her shop worth Kshs.1,427,400/- as evidenced by annexures marked "HW-2(a), (b) and (c).
15. From the said annexures, it is clear that the complaint by the tenant was as at March 2023 still pending under investigation and nobody therefore had been charged or convicted of the alleged offence of shop breaking and stealing. I however doubt that such charge or conviction would absolve the tenant from paying rent.
16. The Mpesa statement annexed to the tenant's replying affidavit reveals that the last rent payment was made on 10th December 2022 in the sum of Kshs.9,200/-. No other payment thereafter has been proved. The landlord's statement on rent payment shows that as at the date of filing suit, the tenant was indebted in the sum of Kshs.106,600/-. This has not been disputed by the tenant save on the basis of alleged shop breaking and stealing.



17. In the premises, I am convinced that the tenant was indebted to the landlord in the sum of Kshs.106,600/- as at the date of filing the complaint. The amount has continued to accrue every month and despite being ordered to provide evidence of payment of the arrears, she failed to do so.
18. The most cardinal obligation of a tenant in any tenancy contract is payment of the reserved rent. Failure to pay rent exposes a tenant to distress for rent under Section 3(1) of [Cap. 293](#) of the Laws of Kenya.
19. Section 12(4) of [Cap. 301](#), Laws of Kenya provides as follows:-
- “In addition to any other powers specifically conferred on it by or under the [Act](#), a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant and may make such order thereon as it deems fit”.
20. The landlord has sought for eviction orders against the tenant without issuing a termination notice under Section 4(2) of [Cap. 301](#), Laws of Kenya. I am unable to grant the said relief and in Lieu thereof shall allow the landlord to recover the outstanding rent by way of distress for rent using a licensed Auctioneer who shall be provided with security by the OCS, Kitale Police Station. This order is made pursuant to Section 12(1) (h) of [Cap. 301](#), Laws of Kenya.
21. Costs of any action before the Tribunal are within its discretion under Section 12 (1) (k) but always follow the event unless for good reasons otherwise ordered. I have no reason to deny costs to the landlord.
22. In conclusion, the final orders which commend to me in this case are:-
- a. The tenant is ordered to pay the sum of Kshs.106,600/- as at 5th February 2023 together with any additional/accrued rent after the said date with immediate effect.
 - b. In default of compliance with the foregoing, the landlord is authorized to levy distress against the tenant’s goods in the suit premises through a licensed Auctioneer who shall be provided with security by the OCS, Kitale Police Station.
 - c. The tenant shall pay costs of Kshs.20,000/- to the Landlord for this case.

It is so ordered.

RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 8TH DAY OF AUGUST 2023.

HON. GAKUHI CHEGE

VICE CHAIR

Ruling delivered in the presence of:-

Kimani for the Landlord/Applicant

Nakirate for the Tenant

Nakitare: I seek for stay of execution for a period of 30 days as there is a ruling of ELC Kitale stopping collection of rent by the landlord. I shall avail the ruling.

I have no objection. We can mention in 30 days.

Order: Mention on 12/9/2023. Stay of execution is granted until then.

HON. GAKUHI CHEGE

VICE CHAIR



8/8/2023.

