



**Gitau v Mbugua & another (Tribunal Case E428 of 2023)  
[2023] KEBPRT 1341 (KLR) (19 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1341 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E428 OF 2023  
P MAY, MEMBER  
SEPTEMBER 19, 2023**

**BETWEEN**

**JOHN MUNGAI GITAU ..... APPLICANT**

**AND**

**GEOFFREY KARIUKI MBUGUA ..... 1<sup>ST</sup> RESPONDENT**

**WAMI AGENCIES ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Background**

1. The tenant approached the Tribunal by filing the reference dated 26<sup>th</sup> April, 2023 challenging the notice to vacate dated 28/3/ 2023 which required them to vacate the demised premises by 30/4/2023. Simultaneously, the tenant filed a notice of motion application seeking for orders of temporary injunction against the landlord and agent.
2. The application was placed before the Tribunal on 28<sup>th</sup> April, 2023 whereby the Tribunal issued orders preventing the eviction of the tenant pending the inter- partes hearing. The tenant was ordered to effect service.
3. The respondents upon being served duly entered appearance and filed their response in opposition to the application vide the Replying Affidavit sworn on 6<sup>th</sup> June, 2023. The parties elected to canvass the application by way of written submissions. There has been compliance by both parties. I will summarize each party's position hereunder:

**Tenant's case**

4. It was the tenant's contention that they leased the demised property from the landlord sometimes in January, 2012 at an agreed rent of Kshs. 15,000. He stated that the nature of business that he was operating was that of a retail pharmacy. He averred that sometimes in February, 2020 he began



experiencing challenges and he temporarily closed his shop in October, 2022. He stated that he accumulated rent arrears but had given the landlord a payment proposal of settling the rent arrears.

5. In his submissions, the tenant faulted the landlord for issuing a defective notice to vacate which contravened the mandatory provisions of [Cap 301](#). The tenant indicated that they did not wish to comply with the said notice and urged the Tribunal to allow the application as drawn.

### **Landlord's case**

6. The landlord in their pleadings admitted to the existence of a tenancy relationship between the protagonists herein. The tenant had occupied the demised premises for more than a decade. The landlord contended that the tenant had breached the terms of the tenancy as he had accumulated rents arrears and outstanding electricity bill.
7. The landlord stated that by the tenant pursuing alternative dispute resolution through the Office of the chief, the tenant had waived his rights under [Cap 301](#). The landlord stated that the Tribunal should not rewrite the terms of the mutual consent between the parties herein. The landlord further averred that the tenant had not paid the outstanding rent arrears.

### **Analysis**

8. The parties seem to be in agreement that the present dispute may have been contributed by a sequence of events but now revolves around the validity of the notice to vacate issued by the landlord. As stated above, the tenant maintained that the notice was void as it did not comply with the mandatory provisions of [Cap 301](#).
9. The requirements for the grant of temporary orders of injunctions are now well settled as were discussed in the celebrated case of; *Giella vs Cassman Brown*.
10. There is no doubt that the remedies sought in the instant application are equitable. Equity requires that whoever comes to a court of equity must do so with clean hands. It is also required that he who seeks equity must do equity. The tenant herein is obliged by law to pay rent for the premises as and when required. There is documentation on record and the tenant's own admission acknowledging to being indebted to the Landlord.
11. The tenant has admitted to having defaulted in payment of rent. The default constitutes a breach of their contractual obligations. The tenant has however indicated that they have taken steps to rectify the default through the proposal given vide the commitment letter dated 15<sup>th</sup> February, 2023.
12. The consent while it constitutes a contract did not waive or limit the rights of the parties under [Cap 301](#) as wrongly alluded to by the landlord. The landlord still had a duty to comply with the provisions of Section 4 on terminating the tenancy. In this regard, the application by the tenant succeeds but the Tribunal is quick to state that it shall not condone a party who hides behind the process of the Honourable Tribunal so as to default on their obligations.

### **Disposition**

13. The application is allowed on the following terms:
  - a. The application dated 26<sup>th</sup> April, 2023 is allowed in terms of prayer 4.
  - b. The tenant to file and serve a statement on proof of payment of rent and outstanding arrears made pursuant to the letter dated 15<sup>th</sup> February, 2023 within 7 days from the date hereof. The tenant should further clear any outstanding arrears that may have been accumulated during



the course of these proceedings within the said period, in default the landlord shall be at liberty to levy distress.

- c. Each party shall bear their own costs.
- d. The reference dated 26/4/2023 is settled under similar terms.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2023**

**HON. P. MAY - MEMBER**

**19. 9.2023**

In the absence of the parties

