



**Njeru v Sialala (Tribunal Case E413 of 2022)
[2023] KEBPRT 1 (KLR) (Civ) (9 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E413 OF 2022
GAKUHI CHEGE, VICE CHAIR
JANUARY 9, 2023**

BETWEEN

MARY W NJERU TENANT

AND

ALEXANDER KIPAIYU SIALALA LANDLORD

RULING

1. The tenant moved this tribunal by way of a complaint dated May 13, 2022 under section 12(4) of cap 301, Laws of Kenya in which she states that her business premises namely “furniture land” had been invaded by the landlord who had forcefully evicted her and damaged property. She had been injured in the process and the premises door was locked after being chased away.
2. She simultaneously filed a motion dated May 13, 2022 seeking for an order to compel the landlord to immediately return all the confiscated belongings with immediate effect.
3. The tenant by an order of this tribunal given on May 13, 2022 was allowed to sue as a pauper with filing fees being waived. The landlord was ordered to return all the confiscated belongings to the tenant with immediate effect pending hearing of the application inter-partes. The application was fixed for hearing on 9/6/2022.
4. The Deputy Inspector General of the Kenya Police Service wrote to this tribunal on May 19, 2022 seeking authentication of the order given on May 13, 2022. The same was confirmed to be authentic *vide* the tribunal’s letter dated May 25, 2022.
5. On May 17, 2022, the tenant filed a second application of even date seeking for committal of the landlord to six (6) months jail for disobeying a court order given on May 13, 2022. She also sought for a breaking order to enable police get her back to the shop.



6. On May 18, 2022, the matter was considered in chambers and this tribunal issued a breaking order to the tenant in terms of her application and the OCS, Ongata Rongai police station was directed to assist in enforcing the order. The application was directed to be heard inter-partes on June 9, 2022.
7. On June 6, 2022, the landlord wrote to this tribunal seeking to be supplied with copies of the pleadings to enable him to respond stating that he learnt about the case after visiting the registry to confirm validity of a suspicious order which did not contain the case number or parties which was affixed on the suit premises by the tenant. He paid perusal fees of Kshs 100/- on June 9, 2022.
8. On June 9, 2022, the matter was adjourned to July 4, 2022 after the landlord's counsel requested for 21 days to respond to the matter.
9. On July 4, 2022, the tenant complained that her business was still locked by the landlord and that she had made a report to the police headquarters and IPOA. Her electricity was also disconnected and she had been threatened with death by the landlord's sons. The landlord's counsel responded that the suit premises were opened on June 11, 2022 and that the tenant was living therein.
10. As a result, this tribunal directed its rent inspector to visit the suit premises and establish if the same was open or closed. The rent inspector was also to confirm if there was electricity supply to the premises.
11. On July 11, 2022, this tribunal received a letter from the Principal Secretary, interior and citizen services dated July 5, 2022 stating that the tenant had not sought any assistance from OCS Ongata Rongai police station and that she was unavailable on her cellphone no. 0700xxxxxx.
12. On July 21, 2022, the tenant wrote to this tribunal complaining that despite the police verifying authenticity of the court order, they had failed to assist her get back to the premises. On the same date, this tribunal gave an order that the rent inspector be accorded Police escort by OCS, Ongata Rongai Police Station during the visit to the suit premises.
13. On August 18, 2022, the tenant wrote to this Tribunal giving a history of what had transpired since May 6, 2022 stating that her life was in danger. She again wrote another letter on the same subject seeking for a copy of the court order dated September 27, 2022. On the said date, the tribunal gave a further mention of the case for November 10, 2022 for the rent inspector to visit the premises and file a report.
14. The rent inspector visited the premises on the same date of September 27, 2022 accompanied by the tenant, a police officer from Ongata Rongai police station but in absence of the landlord or his advocate. The rent inspector confirmed that although the suit premises door had been welded, the same was reopened by police officers from Ongata Rongai police station on June 10, 2022 and the tenant was let in.
15. There was no electricity supply to the premises and the wires and bulbs had been pulled out. The rent inspector concluded that the tenant's premises has three doors two of which were locked and one open. The tenant was able to gain access through one of the doors. The emergency door (the one broken by police) had a padlock whose owner was unknown. There was no operation at the premises by the time of inspection.
16. In response to the tenant's complaint and applications in this matter, the landlord filed a replying affidavit sworn on June 8, 2022 wherein he deposes that he learnt of the case when he visited this Tribunal to confirm authenticity of a suspicious copy of order bearing the seal of the court affixed on the suit premises. The order had no case number nor parties to the suit.



17. After visiting the tribunal's registry, he paid the requisite perusal fees and was supplied with copies of pleadings from the court file.
18. He deposes that on May 4, 2022, he had served the tenant with notice to terminate tenancy and left for business to Oloitoktok.
19. He denies having conducted any eviction against the tenant or confiscating her goods as alleged in the supporting affidavit and application dated May 5, 2022.
20. Instead, the landlord contends that the tenant ought to have lodged her complaint with the police against the goons who allegedly evicted her and destroyed/confiscated her properties.
21. The landlord deposes that the tenant was evicted by a group of people who claimed that she had converted the shop into a residential house and was always taking a bath in the open thus embarrassing neighbours and passersby.
22. The landlord deposes that he only visited the suit premises on June 4, 2022 to see the order affixed thereon and found the room locked with nothing inside on peeping through the window.
23. As such, there was no landlord/tenant relationship between him and the applicant to warrant the intervention of this tribunal as the room was vacant.
24. According to the landlord, he leased the suit premises to the tenant on January 1, 2020 at a monthly rent of Kshs 12000/-. She however refused to pay rent soon after executing the tenancy agreement and converted the premises into a residential house prompting the issuance of a notice to vacate dated May 26, 2020 "marked ASK II".
25. The tenant is accused of being in rent arrears of Kshs 300,000/- since 2020 when corona pandemic broke out and she converted the suit premises into a residential house.
26. The tenant filed a case at the rent restriction tribunal in Nairobi *vide* RRT Cause no 905 of 2020 and was given *ex-parte* orders on December 31, 2021 but the case was subsequently dismissed on May 4, 2022 and she was directed to pursue her issues in this tribunal. The orders of the said tribunal are marked 'ASK II & III'.
27. The respondent also filed a notice of motion application dated June 9, 2022 seeking for stay of the orders issued on May 13, 2022 and May 19, 2022. The said application appears to have been abandoned as it has no directions issued thereon.
28. The respondent's counsel filed written submissions dated May 12, 2022 in respect of the tenant's applications dated May 12, 2022 and May 17, 2022. I shall consider the same while addressing the issues for determination.
29. Based on the foregoing pleadings, the following issues arise for determination:-
 - a. Whether the tenant is entitled to the reliefs sought in the applications dated May 12, 2022 and May 17, 2022.
 - b. Who is liable to pay costs?.
30. As the complaint filed by the tenant raises the same issues as the two applications, I shall consider it together with the applications under section 12(4) of cap 301, Laws of Kenya.
31. The principles considered in an application for mandatory injunction are settled through case law. The court of appeal in the case of *Kenya Breweries Limited & Another vs Washington O Okeyo (2009) eKLR*



cited with approval the treatise Halsbury's Laws of England 4th Edn paragraph 948, volume 24 at page 2/3 of its judgment as follows:-

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if not done is a simple and summary one which can be easily remedied or if the defendant attempted to steal a march on the plaintiffa mandatory injunction will be granted on an interlocutory application”.

32. In her application dated May 12, 2022, the tenant is seeking for an order to compel the defendants to immediately return all the confiscated belongings back to the plaintiff with immediate effect.
33. The alleged goods that were confiscated are not listed, the date of alleged confiscation is not given neither is the manner in which the impugned act was carried out particularized.
34. The respondent denies in his replying affidavit having carried out the alleged confiscation and there is no evidence of any report of the said criminal act to the police. The affidavit in support of the application contains only three (3) paragraphs which do not allude to the alleged confiscation. Instead it relates to alleged disobedience of a court order which is not attached. It is indeed not supportive of the alleged confiscation of the applicant's property.
35. I have also noted that the tenant has not disclosed the circumstances under which the alleged confiscation was carried out and how the landlord was involved. This is despite the fact that the landlord in his replying affidavit has alleged that the said eviction was carried out by neighbours in his absence. No further affidavit was filed by the tenant to controvert the said allegation/deposition by the landlord. It is therefore not demonstrated by the tenant that this is a clear case for issuance of a mandatory injunction. The application is thus a candidate for dismissal.
36. In regard to the application for committal of the landlord to civil jail for disobeying the court order given on May 13, 2022 as prayed *vide* the motion dated 17th May 2022, I note that this tribunal's jurisdiction is ousted by section 12(2) of cap 301, Laws of Kenya to make any such orders.
37. Section 12(2) of the said act provides as follows:-

“(2) A tribunal shall not have or exercise any jurisdiction in any criminal proceedings for any offence whether under this act or otherwise”.

38. It is trite law that contempt of court proceedings are quasi-criminal in nature and this tribunal's jurisdiction is expressly ousted by the foregoing section of the law creating it.
39. Even if I was wrong in this regard, there is no evidence that the respondent was served with the order as no affidavit of service had been filed by the tenant prior to institution of the said application. There is equally no evidence that the landlord holds the tenant's properties ordered to be returned more so when the same is viewed against the replying affidavit whose depositions have not been controverted.
40. In the circumstances, the tenant's application for contempt of court is in the wrong forum in view of section 12 (2) of cap 301, Laws of Kenya as read with section 5(1) of the Judicature Act which provides as follows:-

“(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of



Justice in England and such power shall extend to upholding the authority and dignity of subordinate courts”.

41. Article 169 (1) (d) of the Constitution of Kenya, 2010 ranks local tribunals as subordinate courts and as such the power to uphold their authority and dignity is vested in the High Court or its equivalent being the Environment and Land Court under the Judicature Act. As such the application is a candidate for dismissal.
42. Finally, the tenant has not demonstrated that prior to coming to this tribunal, she was operating any business within the meaning of section 2(1) of cap 301, Laws of Kenya. She first went to the Rent Restriction Tribunal which deals with residential premises where she obtained interim orders of injunction. Her case was subsequently thrown out by the said tribunal and she was directed to file her complaint with this tribunal. No trade licence/single business permit has been exhibited by the tenant/applicant to controvert the landlord’s deposition that she has been using the suit premises as a residential unit as opposed to a business premises. She has not presented any iota of evidence to prove that she enjoyed a controlled tenancy under cap 301, Laws of Kenya. This makes the complaint incompetent and a candidate for dismissal.
43. As regards costs, the same are always at the tribunal’s discretion under section 12(1) (k) of cap 301, Laws of Kenya. The tenant/applicant was allowed to sue as a pauper and as such cannot be condemned to pay costs in this matter. I shall order that each party bears own costs.
44. In conclusion therefore, the final orders which commend to me in this case under section 12(4) of cap 301, Laws of Kenya are as follows:-
 - a. The tenant’s application dated May 12, 2022 and May 17, 2022 are hereby dismissed and all interim orders issued pursuant thereto discharged/vacated forthwith.
 - b. The tenant’s complaint dated May 13, 2022 is equally dismissed as it raises the same issues as the application.
 - c. Each party shall bear own costs of the case.

It is so ordered.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 9TH DAY OF JANUARY 2023.

HON. GAKUHI CHEGE

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of:

Gwaro for the Landlord/Respondent

No appearance for the Tenant/Applicant

