



Chomba v Lumbasi T/A Ngurubani Medical Service; Kiama (Interested Party) (Tribunal Case E518 of 2023) [2023] KEBPRT 717 (KLR) (24 November 2023) (Ruling)

Neutral citation: [2023] KEBPRT 717 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E518 OF 2023
A MUMA, AG. CHAIR
NOVEMBER 24, 2023**

BETWEEN

ISAAC CHOMBA APPLICANT

AND

ISAAC LUMBASI T/A NGURUBANI MEDICAL SERVICE RESPONDENT

AND

PAULINE WANJIRU KIAMA INTERESTED PARTY

RULING

A. Parties And Representatives

1. The Applicant is the Landlord and had rented out the space on the suit premises erected on L.R NO. Wang'uru/Ngurubani/99 to the Tenant (hereinafter the "Landlord").
2. The firm of Odero and Partners Advocates represents the Landlord in this matter.
3. The Respondent herein is the tenant and had rented space for business purposes in the suit property (hereinafter the "Tenant").
4. The Firm of Maina Kagio and Co. Advocates represents the Respondent in this matter.
5. The Interested Party is the sole director of Ngurubani Medical Services, the Tenant herein in the suit property.
6. The firm of Magee Law LLP represents the Interested Party herein.



B. Background Of The Dispute

7. The Applicant/Landlord herein moved this Tribunal by way of an Application and Reference dated 24th May 2023 under a Certificate of Urgency seeking the following orders;
 - i. That this application be and is hereby certified urgent and the same be placed down for hearing on a priority basis and service be dispensed with in the first instance.
 - ii. That an order be issued allowing the landlord/Applicant to exercise his right to distress for rent by retaining tenants/Respondent's allowable movable properties and/or items currently in the premises therein on L.R NO. Wang'uru/Ngurubani/99.
 - iii. An eviction order be issued for the landlord to acquire vacant possession of the premises therein on L.R No. Wang'uru/Ngurubani/99.
 - iv. That the Honourable Court be pleased to give an order of eviction on the Respondent from the demised premises.
 - v. That the O.C.S of Mwea East Police Station, to ensure security and compliance of these orders.
 - vi. That costs of this suit be provided for.
8. The Tribunal through an Order dated 30th May 2023 granted prayer 1 and directed the Tenant to pay KShs. 300,000 before the next hearing and that the Landlord serves the Tenant for hearing on 28th June 2023.
9. On 25th July 2023, the Interested Party filed an application seeking to be joined in the matter on the grounds that the Applicant and the Respondent were married and also the directors of Ngurubani Medical Services Limited. In anticipation of the dissolution of their marriage, they entered into a memorandum of understanding and the Interested Party herein remained as the sole director for Ngurubani Medical Services Limited. It is on this premise that the Interested Party was joined owing to the fact that she was therefore the proper person to represent the respondent in the suit.
10. This Tribunal issued directions which allowed the Applicant to be joined as an Interested Party.

C. The Landlord's Claim

11. The Landlord avers that the Tenant herein has continued to occupy and/or trading in the suit premises for 11 months without paying rent and is in rent arrears amounting to KShs. 1,661,000/=.
11. The Landlord claims that the Respondent/Tenant has continuously defaulted on rent payment despite several reminders and follow up occasioning loss to the Applicant and that he has exhausted all the possible means to reach the Tenant.
11. He also claims that he is currently servicing a loan and the inability of the Tenant to pay has greatly prejudiced him.
11. The Landlord also avers that he had served the Tenant with a notice requesting the Tenant to vacate but the Tenant has failed to honour the same and continues to occupy the premises.
11. It is the Landlord's claim that the outstanding rent arrears are an amount over Kshs. 3,000,000.00.



D. The Interested Party's/tenant's Case

11. It is the Tenant's case that the Landlord unilaterally altered the tenancy agreement with Ngurubani Medical Services Limited and issued a defective notice as it did not provide for the grounds for the alteration of the tenancy agreement hence in contravention of Section 4(2) of the [Landlord and Tenant \(Shops, Hotels, Catering Establishments\) Act](#) Cap 301.
12. The Tenant also claims that the Landlord did not give the tenant an opportunity to indicate whether it agreed to comply with the notice and ignored the tenants reply to the letter on alteration of the terms of the tenancy agreement.
11. The Tenant also states that the agreement entered into on 8th December 2021 between the Landlord and Isaac Tali Lumbasi for payment of rent arrears is void as Isaac Tali did not have the capacity to enter into such an agreement on behalf of Ngurubani Medical Services Limited.
12. The Tenant stated that they had communicated a fee arrangement proposal to the Landlord to clear the arrears in monthly instalments of KShs. 100,000/= till payments in full but the Landlord has since not responded to the same.
11. The Tenant disputes the outstanding rent arrears and avers that the orders sought by the Landlord to exercise his right to distress and evict the Tenant from the suit premises are not warranted as the rent arrears claimed are not accurate.

F. Jurisdiction

11. The jurisdiction of this Tribunal is not disputed.

F. List Of Issues For Determination

11. The issues raised for determination are as follows;
 - a. Whether the Landlord is entitled to reliefs sought in Application dated 24th May 2023?

F. Analysis & Determination

23. The Application filed by the Landlord raises fundamental issues discussed herein below:
23. The Landlord moved this Tribunal seeking that be granted orders to levy distress on properties in the suit premises, that the tribunal issue an order for the Landlord to acquire vacant possession and the Tenant be evicted from the premises.
24. When the matter came up in Court on 21st August 2023, the Counsel for the Tenant confirmed that they had complied with the Orders of the Tribunal and had deposited an amount of Ksh. 300,000.00.
23. The Landlord is said to have issued the Tenant with a Notice seeking to alter the terms of tenancy increasing the rent amount to Ksh. 151,000.00. Indeed, Section 4 (2) of the [Land and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Chapter 301 Laws of Kenya permits 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, to do so provided that they shall give notice in that behalf to the tenant in the prescribed form.
23. The Tenant does not dispute being in rent arrears and has proposed to clear the outstanding rent arrears in five (5) monthly instalments of KShs. 115,400 (One Hundred and Fifteen Thousand, Four Hundred



Only) and will continue to pay rent amount of KShs. 51,000.00 Only. It is evident that the rent payable is in contention.

F. ORDERS

23. The upshot is that the Landlord's Application is hereby compromised and Reference to be heard as follows in the following terms:
- a. The Landlord to file statement of account in 14 days and the Tenant to file their statements of account on rent arrears within 14 days thereafter.
 - b. The Landlord and Tenant to file valuation of rent reports in 14 days each Tenant to commence to determine correct rent value and correct arrears.
 - c. Hearing on 24th January 2024.
 - d. In the interim Tenant to pay conceded arrears at 115,000pm for the next 5 months over and above the rent of Ksh.51,000/- pm to offset the arrears.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 24TH NOVEMBER 2023.

HON A. MUMA

AG CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

In the presence of Wanjira for Magae for IP and Osiomo for Odera for Landlord.

