



**Maingi v Seyyida (Tribunal Case E919 of 2022)
[2024] KEBPRT 813 (KLR) (7 June 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 813 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E919 OF 2022**

P MAY, MEMBER

JUNE 7, 2024

BETWEEN

FRANCIS NZIOKI MAINGI TENANT

AND

DOROTHY CYNTHIA SEYYIDA LANDLORD

JUDGMENT

1. The present proceedings were commenced through the tenant's reference dated 11th October, 2022. The tenant approached to challenge alleged illegal closing of the demised premises thus urged the Tribunal to make an order for reopening of the demised and that he be granted quiet possession.
2. The parties had previously filed interlocutory applications but the same had to be dispensed with before parties could proceed to canvass the reference. The parties opted to the hearing proceed by way of affidavit evidence and later each party filed their written submissions.

DIVISION - Summary of the tenant's case:

3. The tenant acknowledged that there existed a landlord and tenant relationship between the parties herein. The tenant averred that it had always paid rent as when it fell due. He stated that in an unprecedented turn of events, the landlord invaded the premises and locked the said premises. The tenant therefore claimed that the landlord failed to act within the purview of the law and that her actions were in blatant breach of the mandatory provisions of CAP 301.
4. The tenant in order to prove that they were up to date in paying rent provided a schedule with payment up to the month of May, 2023. The schedule relied on Mpesa reference numbers.

Summary of the landlord's case:

5. The landlord did not refute the claims that she had closed the demised premises. She stated that she complied with the orders of the Tribunal by opening the demised premises under the supervision of



the OCS Kitui police station. The landlord also denied the allegations made against her of using the tenant's premises and occasioning them loss. She also denied that the tenant was up to date in the payment of rent.

6. I have considered the affidavits on record and their corresponding annexures and the submissions filed and wish to proceed as follows:
7. From the onset, it is important to restate that the procedure of terminating a controlled tenancy is contained in the Act. Under Section 4(1) thereof, termination of controlled tenancies can only be undertaken under the purview of the Act as follows:-

“4(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with the following provisions of this Act.

- (2) 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, shall give notice in that behalf to the tenant in the prescribed form.

8. The mode of terminating controlled tenancy through locking the premises is one that is unknown in law and unjustified. Such antics belong to the jungle and can only be applied by the uncivilized. The present proceedings could have been averted as the landlord acted within the law.
9. The claims that the tenant was in rent arrears have not been substantiated. The landlord despite having a statutory obligation to keep a rent book has not produced one to prove their claim. I am convinced that the tabulation given by the tenant is correct.
10. Having made the above finding, I will now turn to the claims made by the tenant on loss of business. The claims made by the tenant are in the nature of special damages. The law is quite clear on the head of damages called special damages. Special Damages must be both pleaded and proved, before they can be awarded by the Court. Suffice it to quote from the decision of the Court of Appeal in Hahn V. Singh, Civil Appeal No. 42 Of 1983 [1985] KLR 716, at P. 717, and 721 where the Learned Judges of Appeal - Kneller, Nyarangi JJA, and Chesoni Ag. J.A. - held:

“Special damages must not only be specifically claimed (pleaded) but also strictly proved.... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”

11. The tenant made assertions that the landlord continued to use run their business during the period under closure and that they unjustifiably enriched themselves to the tune of Kshs. 380,000/- This was supported by the water used. The tenant did not however adduce any expert report or previous business records to support their claim. On the alleged loss of business, the tenant did not also adduce sufficient evidence that would convince the Tribunal to make a decision in its favour.
12. As stated above, the present proceedings could have been averted as the landlord acted within the law. It is therefore proper that they be condemned to pay costs.
13. In the end the following orders commend itself:



- a. The tenant's reference dated 11th October, 2022 is allowed.
- b. The landlord to file a statement of account of payment of rent from the month of June, 2023.
The tenant to settle any outstanding rent arrears within 21 days of receipt of the statement.
- c. The tenant is granted costs of the reference assessed at Kshs. 100,000 to be waived from the rent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF JUNE, 2024

HON. PATRICIA MAY

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the absence of the parties

