



**Juma v Anyiko (Tribunal Case E809 of 2023)
[2023] KEBPRT 678 (KLR) (7 November 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 678 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E809 OF 2023
N WAHOME, MEMBER
NOVEMBER 7, 2023**

BETWEEN

ILLAN BEN JUMA APPLICANT

AND

BETTY ANYIKO RESPONDENT

JUDGMENT

1. The Tenant/Applicant Mr. Allan Ben Juma commenced these proceedings by way of a Reference dated 17th August 2023. The Reference is prepared by his Advocates M/S Ondenjo, Kibet and Khalid Advocates.
2. Accompanying the reference was a Notice of motion of even date and which was brought under certificate of urgency. The motion sought for orders to have the Respondent/Landlady deposit the money received by herself from the Tenant as rents and deposit thereof into the Tribunal. The amount was Kshs 109,638 less Kshs 5,362 for seven(7) days when the Tenant occupied the demised premises.
3. That on the 8th September 2023 after having been satisfied that the landlord had been served with the pleadings herein and a hearing notice, the tribunal proceeded to issue the following orders,
 - a. Application dated 17th August 2023 is allowed in terms of prayer 2. The Respondent/Landlady should deposit Kshs 109,638.00 with this court within the next 7 days of the date hereof.
 - b. The reference herein and dated 17th August 2023 to be heard on the 6th October 2023.
 - c. The landlady/Respondent to be served and an affidavit of service filed before the hearing date.
4. The hearing of the reference was adjourned on the 6th October 2023 and fixed for hearing on the 16th October, 2023. On this date the court on being satisfied that the landlady had been served with a hearing notice and on considering the Affidavit of service sworn by Collins Omondi Otieno on the 6th October 2023 allowed the Tenant to proceed with his case.



5. The Tenant Allan Ben Juma in a short testimony gave evidence to the effect that:-
 - i. He entered into an oral agreement with the landlady on the 4th July 2023 for a business premises at South B area in Nairobi.
 - ii. That on the 5/7/2023, he paid Kshs 115,000/- to the landlady being rent deposit for two (2) months and rent for three (3) months.
 - iii. That when evaluating the demised premises for purposes of making it suitable for his business, he found an electricity post which cut right in front of the demised shop making it impossible to run the business that he intended.
 - iv. On the 11th July 2023 he communicated the information to the landlady and who had no problem with recession of the oral agreement.
 - v. The parties agreed to have the Tenant pay for the 7 days that he was in possession of the premises which summed up to Kshs 5,362. The landlady was therefore to refund the Tenant Kshs 109,638.
 - vi. That the landlady has since declined to refund the amount of Kshs 109,638 to the Tenant despite continued promises to that effect.
 - vii. That the monies were from a loan which was to be serviced from the Business and the same had fallen due thus occasioning him suffering and distress.
6. The Tenant requested the court to therefore investigate the matter under section 12(4) of [Cap. 301](#) and have the Kshs 109,638/- ordered refunded to him. He also sought for costs.
7. The landlady as earlier noted, did not respond to the Tenant's demand letter from his advocates for refund of the Kshs 109,638 and further did not respond to the reference nor the motion thereof.
8. The Tenant brought the reference herein under Section 12(4) of [Cap. 301](#), the same provides that:

“In addition to any other powers specifically conferred on it by or under this 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.
9. Section 12(1) (k) of the Act provides that the Tribunal may:
 - i. Award costs in respect of references made to it, which costs may be exemplary costs where the Tribunal is satisfied that a reference to it is frivolous or vexatious”.
10. From the foregoing, there is no doubt that this court has the wherewithal to address the Tenant's grievances. I also appreciate that the orders of this court which were made on the 12th September 2023 were never complied with. The said orders required the landlady to deposit the aforesaid Kshs 109,638 with the Tribunal.
11. The upshot of all this and taking cognizance of all the Tenants dispositions in court, I am persuaded that he has been able to establish his grievances and that he is deserving of the interventions that he has sought from this court.
12. The orders that therefore commend themselves to me from the totality of the circumstances of this case are as follows:



- a. Judgement is entered for the Tenant and against the landlady at Kshs 109,638 with interest at court rates effective the 12th July 2023. Until the same is paid in full.
- b. Costs of the reference and the motion assessed at Kshs 30,000/-.

RULING DATED, SIGNED & DELIVERED THIS 7TH DAY OF NOVEMBER 2023.

HON. NDEGWA WAHOME (MBS)

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

