



**Abaya v Kerario (Tribunal Case E064 of 2023)
[2024] KEBPRT 299 (KLR) (12 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 299 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E064 OF 2023
N WAHOME, MEMBER
MARCH 12, 2024**

BETWEEN

DECLAR KERUBO ABAYA TENANT

AND

FRED NYAMBEGA KERARIO LANDLORD

RULING

1. This Ruling is on the Application dated 22.12.2023. It was filed together with the Reference of the same date. The Application was accompanied also by a certificate of urgency dated 18.10.2023. The Application, just like the Reference sought for the following reliefs; -
 - i. Spent
 - ii. That pending the hearing and determination of this Application, there be an order staying rent increment.
 - iii. That pending the hearing and determination of this Application, there be an order stopping any eviction of the Tenant/Applicant by the landlord.
 - iv. That this Honourable court do issue any further orders as it deems fit.
 - v. That the costs of the Application be in the cause.
2. The Tenant's case pursuant to the said Application, the Supplementary affidavit sworn on the 24.01.2024 and the submissions dated the 26.01.2024 was that; -
 - i. She had always paid her rents dutifully and without fail or delay.
 - ii. The monthly rent on the demised premises was Kshs. 7,500/= but which the landlord purported to increase to Kshs. 19,000/=.



- iii. There has been attempts to evict her by taking part of the demised premises, insulting her and her customers and employing all manner of crude measures to evict her which has resulted to her reporting him to Keumbu police station under OB No. 20/15/12/2023.
 - iv. She had used Kshs. 60,000/= to renovate the premises after the landlord took part of the same.
 - v. Had complied with the lease agreements dated 10.10.2021 and 13.12.2022.
3. The Tenant therefore sought for the orders in her Application together with costs.
4. The landlord on his part filed the Replying affidavit sworn on the 21.1.2024. He vehemently opposed the Tenant's Reference and Application on the following grounds; -
- a. That the notice took effect on the 1.11.2023 when the Reference was being filed on the 22.12.2023.
 - b. The Reference and Application by the Tenant were not compliant with Section 6 of the Act.
 - c. The premises were dilapidated and required immediate repairs and renovations.
 - d. The Applicant's Application had not satisfied the principles required for grant of orders of injunction. He cited the case of Giella vs Cassman Brown & Co. Ltd [1973] EA.
 - e. Submitted that the Application was a mere academic exercise.
5. The landlord therefore sought for the dismissal of the Application and Reference with costs.
- I have perused all the materials presented before me and I am of the view that the issues for determination are the following:-

A: Whether the Applicant's Application is merited.

B: Who should bear the costs of this suit.

Issue No. A: Whether the Applicant's Application is merited

- 6. Though there are claims of intended eviction, a purported notice of termination of tenancy and a purported notice to increase rent, no evidence was presented to court of the existence of such notices. However, the landlord did not rebut the Tenant's assertion that he wanted to increase rent to Kshs. 19,000/= from Kshs. 7,500/=.
- 7. The landlord did also not in any way rebut the Tenant's assertion that he was harassing her and her customers and that he had been reported to the police for the harassment. The Tenant claimed that this harassments were informed by the landlord's desire to evict her.
- 8. The landlord has admitted that he indeed wanted the tenant out of the premises to carry out renovations as the premises were in a dilapidated condition with a leaking roof. In any event, he asserted that the Tenancy had already terminated.
- 9. Without any notice to terminate the Tenancy or increase rent as provided by in my view the law, renders all the actions of the landlord to that direction irregular and indeed illegal.



Section 4(2) of the *landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 (hereinafter referred to as “the Act”) provides that:-

“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.”

10. Regulation 4(1) of the Regulations to the Act provides that:-

“A notice under Section 4(2) of the Act by a landlord shall be in form A1 in the Schedule to these Regulations.”

It is evident that no notice whatsoever has been issued to the Tenant for either to terminate the tenancy or increase rent as known to the law.

11. I also note that the orders that were sought by the Applicant were to stay the increment of rent or terminate tenancy. Though the principles necessary for orders of injunction to issue were not cited, a rose by any other name smells the same. Indeed the orders sought by the Applicant were orders of injunction.

12. The case of *Giella vs Cassman Brown* (supra) is very eloquent on the requirements of the law for such orders to accrue to an Applicant. It provides thus;

“The Applicant must first establish a prima facie case with a probability of success, secondly must demonstrate that he/she stands to suffer irreparable loss that cannot adequately be compensated through damages and thirdly, the balance of convenience should tilt in favour of the Applicant.”

13. I am persuaded that the Applicant has satisfied the pre-requisites for the grant of the orders sought. The Respondent had no authority of the law or at all to undermine the rights of the Applicant under the Act. The Applicant had therefore the license to seek for the intervention of this court.

14. In my view, breach of an individual’s right is a good ground that establishes the existence of a prima facie case. Indeed, assault on ones rights without permission of the law can never be compensated enough by damages. I therefore further determine that I am left with no doubt that there exists doubts in this matter and that if any does exist, then same would be resolved in favour of the Applicant.

15. I therefore find that the Applicant is deserving of the orders sought in the Application and will allow the same. Looking at the Reference, the same is in the same terms with the Application. In view of my determination on the question of failure to issue notices for the purported termination of tenancy and increment of rent, I would resolve the Reference in the same terms with the Application.

Issue No. B: Who should bear the costs of the suit

16. The Applicant having succeeded in her Application and therefore also in her Reference, I have no plausible reason to deny her costs. I will therefore in compliance with the proviso to Section 27 of the *Civil Procedure Act* award her the costs herein.

17. In the final analysis, I make the following orders:-

- i. That the Application dated 22.12.2023 is allowed in its entirety and as is the Reference thereof and also dated 22.12.2023.



- ii. That the landlord will not in any manner whatsoever interfere with the Tenant's quiet enjoyment of the demised premises known as Plot No. 33 Keumbu Market unless it is in strict compliance with Cap 301 or by the authority of this court.
- iii. That the OCS Keumbu police station to ensure compliance with these orders.
- iv. The landlord will pay to the Tenant costs assessed at Kshs. 20,000/= to be offset from rent payable to him.

Those are the orders of the court.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12TH DAY OF MARCH, 2024.

HON. NDEGWA WAHOME, MBS

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the absence of the parties though aware of the Ruling date

