



**World Business Centre v Gacheri (Tribunal Case E318 of 2021)
[2023] KEBPRT 436 (KLR) (Civ) (17 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 436 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E318 OF 2021
A MUMA, MEMBER
JULY 17, 2023**

BETWEEN

WORLD BUSINESS CENTRE LANDLORD

AND

CAROLINE GACHERI TENANT

RULING

A. Parties and Their Representatives

1. The applicant World Business Centre is the landlord and the registered owner of the property known as the World Business Centre situate in Nairobi Central Business District LR No 209/545 (hereinafter “the landlord”)
2. The firm of Sakwa Advocates represents the landlord/applicant in this matter.
3. The Firm of M/S Macharia Gakaria Associates represents the respondent/tenant in this matter.
4. The respondent Caroline Gacheri is the tenant of rented business spaces in the World Business Centre Building.

B. Background of The Dispute

5. On November 17, 2020, the tenant filed a plaint and a notice of motion application before the Milimani Commercial Courts praying that judgment be entered against the landlord to permanently restrain them from evicting, attaching, transferring, selling, conveying, charging, leasing or in any way interfering with the plaintiff’s quiet possession and enjoyment of the suit property. Further, the tenant sought special damages, specific performance, general damages and costs of the suit.



6. The court in reference to the application gave orders restraining the landlord from evicting the tenant on December 14, 2020 and which orders were made mandatory on January 25, 2021.
7. Subsequently, the landlord moved this tribunal by way of reference and a notice of motion application dated June 29, 2021 seeking inter alia that pending the hearing and determination of the reference that the landlord be allowed to levy distress for rent arrears of Kshs 576,000 and further that in default of satisfactory recovery that the landlord be allowed to evict the tenant and re-enter the premises.
8. The tenant however opposed this application by filing a notice of preliminary objection questioning the jurisdiction of the tribunal to hear and determine the landlord's reference as the issues raised were *res judicata*.
9. Having considered all pleadings and evidence adduced by parties, this tribunal *vide* a ruling dated December 14, 2021 issued orders; that the landlord's reference be canvassed in full; that the landlord to file a necessary further affidavit, documents, witness statements and statement of accounts within 30 days; the tenant to respond to the same within 30 days and that the matter be scheduled for hearing and confirmation of compliance on February 7, 2022.
10. On February 7, 2022, the matter was dismissed for want of prosecution, owing to the non-attendance of court by the landlord's counsel.
11. The landlord *vide* a notice of motion application dated February 22, 2022 sought to have this tribunal reinstate the suit attributing non-attendance of court on February 7, 2022 to logistical and internet failure.
12. This tenant opposed this application *vide* grounds of opposition dated April 7, 2022 claiming that the landlord's application was misconceived and devoid of merit.
13. The court after hearing both counsel and considering the submissions filed by parties *vide* a ruling dated September 2, 2022 set aside the order dismissing the suit and reinstated the suit.
14. On October 27, 2022 the landlord issued a notice of termination pursuant to section 2 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\)](#) cap 301 Laws of Kenya which was to take effect on January 1, 2023, and which the tenant objected to *vide* a letter to the landlord dated December 22, 2022.

C. Claim and Defence

15. Pursuant to the directions of this tribunal in a ruling dated December 14, 2021, the landlord filed an affidavit and statements of accounts dated April 20, 2023.
16. The landlord claims that the respondent has leased six (6) shops paying a monthly rent of Kshs 30,000.00 per shop and that the tenant has consistently defaulted the monthly rent with the outstanding rent amounting to Kshs 2,000,000.00 as at March 2023, the reason for which the landlord seeks to terminate the tenancy.
17. The landlord also claims that the tenant has been inconsistent in the remittance of the rent and has also not been remitting payment slip to the landlord and hence difficulties to reconcile the accounts.
18. The tenant on the other hand claims that she has paid rent in full and that the landlord received the payments and refused to issue the tenant with receipts.
19. In her replying affidavit and submissions dated May 17, 2023, the tenant claims that the landlord has only stated in a tabular form the amounts owed and has failed to adduce evidence proving the same.



D. Issues for Determination

20. It is the contention of this tribunal that the issues raised for determination are as follows;
- a. Whether the landlord is entitled to recover any rent arrears from the tenant and to vacant possession of the suit premises.

E. Analysis And Findings

i. Whether the landlord is entitled to recover any rent arrears from the tenant and to vacant possession of the suit premises.

21. Section 4(2) of cap 301, Laws of Kenya stipulates 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 to the tenant in the prescribed form.
22. Further, section 7(1) (b) of the said Act provides one of the grounds for seeking to terminate tenancy by a landlord to be a tenant's default in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable.
23. I have noted that the landlord filed a rent account statement showing a sum of Kshs 2,076,000.00 to be owing as at March 2023. I have also noted that the last rent payment of Kshs 1,000,000.00 in the said statement was made as a direct transfer from ABSA Bank on January 12, 2023.
24. The landlord's statement additionally shows that Kshs 500,000.00 was reversed to ABSA Bank on February 17, 2023.
25. Further, I note that tenant has attached bank receipts and Mpesa messages as proof of payment of rent. I have examined the said bank receipts and Mpesa messages against the landlord's statement and I find that the tenant has been paying rent.
26. However, there is no acknowledgement of receipt of the rent paid whatsoever has been exhibited by the landlord save for the statement of accounts relied on.
27. The landlord of a controlled tenancy is obligated under section 3(3) of cap 301 to keep a proper record of the rent paid and other particulars. This, the landlord does not seem to have done, at least on the basis of the material placed before the tribunal.
28. Section (3)(3) of cap 301 is in the following terms;
- “The landlord of a controlled tenancy shall keep a rent book in the prescribed form of which he shall provide a copy for the tenant and in which shall be maintained a record, authenticated in the prescribed manner of the particulars of the parties to the tenancy and the premises comprised therein and the details of all payments of rent and of all repairs carried out to the premises.”
29. The statement relied on by the landlord in this matter does not amount to a rent book as required under section 3(3) of cap 301 and thereof, falls short in material respects for the reason that the same cannot be authenticated in any way.
30. I note that the tenant made a payment of Kshs 580,000.00 on April 17, 2023. Given that the landlord filed its affidavit on April 20, 2023, the statement of accounts ought to have reflected this payment to ensure that the same is up to date.



31. Section 107 (1) of the [Evidence Act](#), cap 80 Laws of Kenya provides that: -

“(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

32. Section 108 of the same Act provides as follows: -

“The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side”

33. This tribunal is therefore faced with a situation where the landlord has not clearly established the rent arrears owing from the tenant. It would be unsafe to allow the distress to proceed at this stage owing to the uncertainties observed above.

34. This is for the reason that when levying distress for rent, the goods proclaimed must have a bearing on the amount owed to avoid a situation where the value of the goods proclaimed far outweighs or under weighs the amount of rent demanded.

35. The landlords claims as such cannot stand neither for arrears and in extension for vacant possession since the same was premised on the claim for arrears.

F. Orders

36. The upshot is that the landlord's reference and application both dated June 29, 2021 is hereby dismissed;

- a. The tenant to remain in the premises and to keep paying rent for the six (6) premises in the sum of Kshs 180,000.00 as and when it falls due.
- b. Each party to bear its own costs.

HON. A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by Hon A. Muma this 17th* day of July 2023 in the presence of Gakaria for the Tenant and M/s Kamau for the Landlord.

HON. A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

