



**Njuki v Aketch & another (Tribunal Case E002 of 2023)  
[2023] KEBPRT 728 (KLR) (21 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 728 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E002 OF 2023  
A MUMA, AG. CHAIR  
NOVEMBER 21, 2023**

**BETWEEN**

**BONIFACE NJUKI ..... LANDLORD**

**AND**

**EVANS PETER AKETCH ..... 1<sup>ST</sup> RESPONDENT**

**JUSTINE NTKIROTE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A. Parties and Representatives**

1. The Applicant, Boniface Njuki, is the owner and landlord of premises situate at Plot No. Gaturi/Gathimu 4363 and Gaturi/Gathimu 4364.
2. The firm of Rose Migwi & Co. Advocates represents the Applicant/ Landlord in this matter (rosemigwiadvocates@gmail.com).
3. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents, Evans Peter Aketch and Justine Ntkirote, T/A Rosa Gracia Co. Limited, are the directors of Rosa Gracia Co. Limited, the Tenant who rented space at two stalls situate at Plot No. Gaturi/Gathimu 4363 and Gaturi/Gathimu 4364 for business (hereinafter known as the “Tenant”).
4. The firm of D. Munene Muriuki & Co. Advocates represents the Tenant in this matter.

**B. The Dispute Background**

5. The Landlord moved this Honourable Tribunal through a Reference dated January 6, 2023 and a Notice of Motion of even date alleging that the Tenant had defaulted in payment of rent arrears amounting to Kshs. 960,000. Through the reference and the Application, the Landlord sought among other orders, that the Tenant be ordered to pay arrears of rent amounting to Kshs. 960,000 and give



vacant possession of the suit premises, and in default, the Landlord be allowed to break into and take possession of the suit premises.

6. Vide an order issued on January 10, 2023, the Tribunal certified the matter as urgent and ordered that the Tenant to pay rent for December, January and February pending inter-partes hearing and subsequently every month as agreed.
7. During the subsistence of the suit, the Tenant settled the rent arrears except for the month of October 2023 as confirmed by the Landlord when the matter came up for hearing on October 4, 2023.
8. The Landlord further filed a Notice of Motion Application dated June 9, 2023 in alleging that the Respondents had unlawfully demolished parts of the Landlord's building without consent. Vide the said Application, the Landlord sought among other orders, that the Tribunal restrain the Respondent, his agents, servants or anybody acting under his instructions from taking possession interfering with the suit premises, and carrying out further construction and renovations thereon, pending the hearing of the said application and the determination of the suit.
9. Vide an Order issued on 13<sup>th</sup> July 2023, when the matter came before the Tribunal for mention, the Tribunal granted orders restraining the Tenant from taking possession, interfering with the suit premises, and carrying out further construction and renovations thereon, pending the hearing of the said application.

#### **C. Landlord's Case**

10. The Landlord avers that he had rented out space to the Tenant at two premises, the first one situate at Plot No. Gaturi/Gathimu 4363 at a monthly rent of KShs. 120,000.00 and second one at Gaturi/Gathimu 4364 at a monthly rent of KShs. 160,000.00.
11. The Landlord alleges that (at the time of filing the Reference) the Tenant had defaulted in payment of arrears for the first premise since October 2022 amounting to KShs. 480,000.00 and for the second premise, the Tenant had not paid rent since November 2022 thus accumulating arrears of KShs. 480,000.00, all arrears amounting to KShs. 960,000.00.
12. Further, vide the Application dated 9<sup>th</sup> June 2023, the Landlord deponed that the Respondents had unlawfully demolished parts of the premises on Plot No. Gaturi/Gathimu 4364, which demolitions were done without any consultations or consent from the Landlord and were likely to compromise the stability and structure of the premises.
13. When the matter came for hearing, the Landlord averred that the Tenant had not paid rent since October 2022 at a monthly rent of KShs. 120,000.00 and was in arrears of KShs. 1,300,000.00.

#### **D. Respondents' Case**

14. In response to the Reference dated 6<sup>th</sup> January 2023, the Tenant, through a Replying Affidavit sworn by the 1<sup>st</sup> Respondent on 1<sup>st</sup> February 2023, he deponed that the Tenant had not defaulted in payment of arrears in the months of October and November 2022 as alleged by the Landlord.
15. The Respondent acknowledged that the Tenant had defaulted in payment of rent for the months of December and January, thus accumulating arrears of KShs. 360,000.00.
16. Additionally, the 1<sup>st</sup> Respondent averred that he had no intentions of vacating the premises as he had incurred great costs in renovating the said premises to have them in their current state and as such any intention to vacate would lead to unrecoverable losses on his part.



17. Further, the Tenant deponed that lease agreement between the Tenant and the Landlord was in relation to a monthly rent of KShs. 160,000.00 which he had been paying vide cheques in favour of the Landlord.
18. Additionally, vide a Further Affidavit both sworn by the 1<sup>st</sup> Respondent on 3<sup>rd</sup> March 2023, he deponed that the Tenant had paid rent for the month of November and December 2022 and was only in arrears for the months of January and February 2023.
19. In response to the Landlord's Application dated 9<sup>th</sup> June 2023 vide a Replying Affidavit sworn on 24<sup>th</sup> July 2023, the 1<sup>st</sup> Respondent deponed that he had entered into a gentleman's agreement with the Landlord, whereby he expressed the desire to rent one floor of the 2<sup>nd</sup> building after renovating it to fit the nature of business he intended to undertake on the premises.
20. The 1<sup>st</sup> Respondent averred that he had not demolished any part of the building and that he only renovated the said premises.
21. He stated that the Landlord was aware at all times and had given express consent for the 1<sup>st</sup> Respondent to conduct the renovations and upgrade to the said premises before occupying the premises and utilizing it for the business.
22. Further, the 1<sup>st</sup> Respondent averred that the Tenant was not in arrears since rent was due upon completion of the renovation and subsequently occupying the premises and utilizing it for business, which was stopped vide the order of the Tribunal issued on 13<sup>th</sup> July 2023.

#### **E. Jurisdiction**

23. The Jurisdiction of this Honourable Tribunal has not been contested by either party and is therefore not in dispute.

#### **F. Issues for Determination**

24. I have carefully perused all the pleadings and evidence presented before this Honourable Tribunal by the parties. It is therefore my respectful finding that the issue for determination is whether the Tenant is in rent arrears.

#### **G. Analysis and Findings**

##### **Whether the Tenant is in rent arrears**

25. The Tenant at paragraph 8 of the 1<sup>st</sup> Respondent's Replying Affidavit and paragraphs 4 and 5 of the Further Affidavit both sworn by Evans Peter Aketch on 1<sup>st</sup> February 2023 and 3<sup>rd</sup> March 2023 respectively, admitted to be in arrears in respect to the two premises situate at Plot No. Gaturi/Gathimu 4363 and Gaturi/Gathimu 4364. The Tenant, however, disputes the amount of arrears fronted by the Landlord (KShs. 960,000) in their Notice of Motion dated 6<sup>th</sup> January 2023.
26. The Tenant avers that according to Lease Agreement executed by the Tenant and the Landlord, the Tenant was to pay a monthly rent of KShs. 160,000.
27. A perusal of the Lease Agreement dated 12<sup>th</sup> October 2021, which lease was executed by the Landlord, Boniface Njuki and the Respondents, Evans Peter Aketch and Justince Nkirote, reveals the rent payable at paragraph 3 of the said Lease Agreement.



28. Paragraph 2 and 3 of the said Lease Agreement reads;

- “ 2. That the lessor shall lease two stalls in Plot No. Gaturi/Gathimu 4363 & 4364 known as Boniface Njuki Building within Embu town for a period of 61 months commencing from 1<sup>st</sup> February 2021.
3. That the monthly rent payable for the two stalls shall be Kshs. 160,000/= (One Hundred and Sixty Thousand Kenya Shillings Only) payable on or before 5<sup>th</sup> of the month the rent falls due. “

29. The Tenant provided copies of cheques evidencing payment of rent in October and November 2022 and a letter forwarding cheque for payment of rent for the November and December 2022 at a rate of KShs. 160,000 per month.
30. The Tribunal on several occasions ordered the Tenant to settle all the rent arrears. We note that when the matter came for mention before the Tribunal on 4<sup>th</sup> October 2023, the Landlord confirmed that the Tenant was up to date with the rent payments except for the month of September 2023.
31. The other rent in dispute is the rent arrears in respect to the premises that the 1<sup>st</sup> Respondent refers to us “one floor of the 2<sup>nd</sup> building” (hereinafter “the second premises”). According to the Tenant, the rent was to become due upon completion of renovation on the said premises.
32. The Landlord, on the other hand, averred that the rent was payable from October 2022 at a monthly rate of KShs. 120,000.
33. We note that there is no written agreement with regards to this second premises. The 1<sup>st</sup> Respondent stated that what they had was a gentleman’s agreement in October 2022.
34. We note that the Landlord in his Application dated 9<sup>th</sup> June 2023 stated that the demolitions were in respect to Plot No. Gaturi/Gathimu 4363 and Gaturi/Gathimu 4364 and moved the Tribunal seeking order of injunction restraining the Tenant from taking possession interfering with the suit premises, and carrying out further construction and renovations thereon, pending the hearing of the said application and the determination of the suit.
35. The Tribunal granted prayer (b) of the said Application, thus restraining the Tenant from taking possession interfering with the suit premises, and carrying out further construction and renovations thereon, pending the hearing of the said application.
36. When the matter came for Mention before the Tribunal on 4<sup>th</sup> October 2023, the Landlord through his counsel stated that the Tenant was in contempt for continuing with the construction and renovations. He also stated that the Tenant had not paid rent for the last year at a monthly rate of KShs. 120,000 thus accumulating arrears to KShs. 1,300,000.
37. We note that while the Landlord refers to Plot No. Gaturi/Gathimu 4363 and Gaturi/Gathimu 4364, the same plots are subject to the Lease Agreement dated 21<sup>st</sup> October 2021 in which the rent payable was KShs. 160,000. The Landlord has therefore, not provided any distinction between the premises referred to in the Referenced dated 6<sup>th</sup> January 2023 and the Application dated 9<sup>th</sup> June 2023.
38. Further, we note that none of the parties filed any statements of accounts and/or any further documents to support their allegations. The Tribunal is unable to make any determination without any supporting documents from either party.



39. As at the time of the ruling the only issue pending was the one year rent arrears as the monthly rent was being paid as the court had ordered. The tenant avers that the arrears was not payable as it was fit out period for the premises and he ought not to pay rent on the same. This is not agreed to anywhere in the lease but ordinarily the tribunal takes judicial notice that most landlords grant 2-3 month fit out periods to tenants for fit out depending on the status of the building. In the circumstances the tenant avers that the renovations were substantial and the same is not refuted I therefor find that they ought to have been given a reasonable fit out period free of rent.
40. It is also not clear when the leases were to commence I will therefore proceed to award the tenant 6 month fit out period working with a figure of 120,000/- per month I order the Tenant to pay the same over a period of one year being 60,000 more over and above the agreed rent for the two premises which appears to be 160,000 per month. The extended fit out is also to cover for the period the landlord moved this tribunal to stop any construction being undertaken by the Tenant.

## **H. ORDERS**

41. The Landlord's Application dated 9<sup>th</sup> June 2023 is hereby allowed partially as follows:
- a. The Tenant to pay Ksh. 60,000 per month for arrears for a period of one year.
  - b. The Tenant to keep paying monthly rent as per the Orders of the Tribunal
  - c. The Reference shall be settled in similar terms.
  - d. No orders as to costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. MUMA ON 21<sup>ST</sup> DAY OF NOVEMBER 2023 IN THE PRESENCE OF DR AKETCH THE TENANT IN PERSON AND NA FOR THE LANDLORD.**

**HON A. MUMA**

**Ag Chair/MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

