



**Njeru v Gichunge (Tribunal Case E036 of 2023)
[2023] KEBPRT 691 (KLR) (1 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 691 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E036 OF 2023
P KITUR, MEMBER
DECEMBER 1, 2023**

BETWEEN

MIRIAM NDURU NJERU TENANT

AND

SAMMY MUTWIRI GICHUNGE LANDLORD

RULING

A. Parties and Representatives

1. The Applicant Sammy Mutwiri Gichunge is the Landlord and the proprietor of Meru Municipality Block 1/49, Shop No. 2 situated in Meru County (hereinafter known as the 'Landlord')
2. The Landlord is represented by Murimi Murango and Associates & Advocates.
3. The Respondent Sammy Mutwiri Gichunge is the Tenant having rented out space from the Landlord herein.
4. The firm of Kaberia Arimba & Co. Advocates represent the Landlady/Respondent in this matter.

B. The Dispute Background

5. The Tenant Avers that the Landlord on the 5th June 2023, locked the business premises belonging to the tenant with trading goods inside completely halting the business of the tenant contrary to section 4 (2) cap 301 laws of Kenya.
6. He further averred that he has been paying rent dutifully at to the Landlord at a rate of Kshs. 25,000/= per month.
7. Aggrieved by this, the Tenant came before this honorable tribunal and filed a reference together with a Notice of Motion Application dated 17th July 2023 together with a Complaint under section 12(4) of the Landlords and Tenants (Shops, Hotels and Catering) Establishments Act Cap 301. The



Tenant was seeking for orders to restrain the Landlord together with his agents and/or servants to be restrained from evicting and harassing the Tenant from the Suit premises as well as orders compelling the Landlord to reopen the premises, to allow the Tenant to continue carrying on with his business.

8. The Landlord opposed the Application by filing a Replying Affidavit dated 1st of August 2023 the premises with all his property and that the Landlady compensates the Tenant for losses incurred when the premises remained locked.
9. The Landlord stated that on 22nd August, 2022 he entered into a Tenancy agreement with the Tenant over the suit premises for a monthly rent of Kshs. 25,000/= . He further stated that the Tenant was in arrears of Kshs. 100,000/= accrued between the month of May and August 0f 2023.
10. The Landlord further denied having locked up the business premises with the Tenant goods inside, He reiterated that the Tenant has in fact never traded in the said premises, and that there are no goods in the said premises.
11. The Landlord made reference to photographic evidence which was produced before this tribunal court as per section 106B of the Evidence Act, Cap 80 Laws of Kenya by one Irene Mwenda who was instructed by the Landlord to produce photographic prints for this purpose.

List of issues for determination

12. The issues raised for determination are as follows;
 - a. Whether the Tenant/Applicant is entitled to the orders sought.

Analysis and Findings

Whether the tenant has defaulted in his obligation to pay rent?

13. The Tenant approached the Tribunal by way of a Reference dated 17th July 2023 in opposition to the Landlord's action of locking the premises together with her goods inside and thus preventing her from accessing the premises and running her business.
14. The Landlord in his Replying Affidavit dated 1st August 2023 stated that the Tenant has never traded in his premises, and neither has he stocked the shelves as alleged.
15. The Landlord further states that the Tenant has not paid rent for the business between the Months of May and August 2023 and that she is in rent arrears of Kshs. 100,000/=
16. No evidence has been tendered to the contrary by the Tenant.
17. The Tenant submitted that they took up possession of the suit premises on the 22nd August of 2022, following which they made the necessary fittings and fixtures in readiness of their business.
18. The Tenant stated that the Landlord allowed her a grace period of two months before she commenced payment of rent, after which she made a deposit of rent together with two months' rent.
19. The Landlord submitted that the Tenant was indeed in arrears, and that she had failed to provide evidence to ascertain their claims. The Landlord made reliance on section 107 (1) of the Evidence Act which provides that whoever alleges must prove.
20. I have perused through the Notice of Motion and the Submissions by both parties and I am persuaded to agree with the Landlord that indeed the Tenant has failed to show proof of payment of the rent as alleged by herself.



21. There are no statements on provided to negate the Landlords claim.
22. Additionally, there is no evidence tendered before this Tribunal of the allegations that the Landlord has locked up the premises with the Tenant goods inside.
23. The Tenant in her Submissions, has alleged that it is the Landlord who issues the receipts and should therefore refrain from demanding for proof of payment.
24. It is my considered view that this is an attempt by the Tenant to shift the burden of proof to the Landlord, contrary to Section 107 (2) of the [Evidence Act](#), which I have reproduced below;

“ 107. Burden of proof

- (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.
 - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
25. In addition to the above, the tenant has failed to prove on a balance of probability, their claim for loss when the premises were closed by the Landlady, as presented in their Application.
 26. I rely on the case of [Muriungi Kanoru Jeremiah vs Stephen Ungu M'mwarabua](#) [2015] eKLR where the court held as follows with regard to the burden of proof:

“. As I have already stated, in law, the burden of proving the claim was the appellant's including the allegation that the respondent did not pay the sum claimed as agreed; i.e. into the account provided.... The trial magistrate was absolutely correct in so holding and did not shift any legal burden to the appellant.... The appellant was obliged in law to prove that allegation; after the legal adage that he who asserts or alleges must prove.... In the circumstances of this case, the respondent bore no burden of proof whatsoever in relation to the debt claimed. By way of speaking, the shifting of burden of proof would have arisen had the trial court magistrate held that the respondent bore burden to prove that he deposited the sum of Kshs. 98,200/= the debt being claimed herein.”

27. The Landlord has been gracious enough to accommodate the tenant but the same has not been reciprocated by the tenant in their obligation to pay rent or clear their arrears.
28. In light of the foregoing, I therefore proceed to order as follows;

C. Orders

- a. The upshot is that the Tenant's Application dated 17th July 2023 is hereby dismissed in the following terms;
- b. The tenant shall clear the arrears of Kshs. 100,000 as at August 2023 together with any other accrued arrears on or before 31st December 2023 failure to which the Landlord shall be at liberty to distress for rent.
- c. Mention on 15th January 2024 for directions on the Complaint and the pending Application by the Landlord.
- d. Each party shall bear their own Costs.



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR THIS 1ST
DECEMBER 2023**

HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

In the presence of;

Omari for the tenant

Ms. Mwikali h/b for Murango for the Landlord.

