



**Emeka v Thayu & another (Tribunal Case E835 of 2023)
[2024] KEBPRT 1189 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1189 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E835 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
JULY 9, 2024**

BETWEEN

INNOCENT EMEKA APPLICANT

AND

JOEL THAYU 1ST RESPONDENT

KENNETH MWANGI THAYU 2ND RESPONDENT

RULING

A. Dispute Background

1. The tenant/applicant moved this Tribunal vide a Reference under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishment\) Act](#) Cap 301 dated 28th August 2023 with a Complaint that the landlord has locked the suit premises and has been harassing and intimidating him contrary to [Cap 301](#) Laws of Kenya.
2. The tenant filed a notice of motion under a certificate of urgency dated 28th August 2023 whose prayers have been overtaken by events as the tenant is no longer in occupation of the suit premises.
3. The tenant/applicant filed another notice of motion under a certificate of urgency dated 26th January 2024 in which he sought for the following orders; -
 - I. That an order be issued directing the respondents/landlords to account for all the goods and items carted away and maliciously damaged in the suit premises and to remedy or pay for any damages, defects or loss of any items estimated at KES. 19,902,410 inclusive of renovation costs as per attached list of tools of trade.
 - II. That the O.C.S Dandora Police Station to enforce the orders.
 - III. That costs of the application be provided for.



4. The application is supported by an affidavit of even date in which the tenant/applicant deposes as follows; -
- i. That the tenant had been running his business at the suit premises located at Dandora Kwa Mbao after entering into a tenancy agreement which was to expire in 2028. A copy of the tenancy agreement is attached.
 - ii. That the tenant used to pay his monthly rent dutifully until when he was forcefully evicted without a court order or legal notice. Copies of rent receipts are attached.
 - iii. That the respondents under the assistance of goons illegally broke into the suit premises and maliciously damaged and carted away goods worth KES. 19,902, 410 inclusive of renovation costs as per the attached list of tools of trade.
5. The 1st respondent/ landlord filed a response to the application erroneously titled supporting affidavit, dated 21st February 2024 in which he deposes as follows; -
- i. That the respondents are the owners of the suit premises on Plot No. 2009 Shop 1 at Komarok Bridge Jua Kali, Dandora Phase 1, Ward 1.
 - ii. That there existed no tenancy agreement between the parties or authorized agent and that the tenant forged the signatures.
 - iii. That the landlords never received any rent from the tenant except KES. 22,000 (which was taken by the landlord's son) as 1 month rent and was supposed to sign a tenancy agreement with the agent starting 1st March 2023, however the said agreement was never signed.
 - iv. That the tenant was in arrears of KES. 55,000.
 - v. That the tenant never occupied the proposed spare parts shop but only dumped an old car at the suit premises and was never seen for 2 months.
 - vi. That the landlord reported the matter of non-payment of rent to the local administration and the tenant did not adhere to the chief's call and notice to pay the outstanding rent.
 - vii. That the landlord added a padlock to the door since it always remained closed.
 - viii. That the landlord kept reminding the tenant to pay rent and on 18th August 2023 the tenant sent KES. 2,000 and in August 2023, the tenant sent another sum of KES.2,000.
 - ix. That the respondents were never served with the original application dated 28th August 2023 and only received the court order from the police.
 - x. That on 29th September 2023, the applicant in the company of police officers broke the landlord's padlock in the absence of the respondents and took whatever was inside the shop and towed his unused parked car away.
 - xi. That it is laughable for the applicant to state that he had lost KES. 19,000,000 which is a lie since he took over his goods and the landlord is not aware of what it was or the value of it.
6. Both parties filed their written submissions with the tenant filing his dated 20th March 2024 and the respondents filing theirs dated 24th March 2024. We shall consider both submissions as we deal with the issues for determination.



B. Issues for determination

7. The following are the issues for determination; -
 - a. Whether the tenant is entitled to the orders sought in the application dated 26th January 2024.
 - b. Who shall bear the costs of the application?

Issue (a) Whether the tenant is entitled to the orders sought in the application dated 26th January 2024.

8. The tenant filed the application seeking for compensation of KES. 19,902,410 from the respondents for all the goods carted away and maliciously damaged as per an attached list of tools of trade inclusive of renovations.
9. The tenant in his written submissions states that the respondents on several occasions have been harassing and frustrating his business by locking the suit premises whenever there would be a slight delay in payment of rent.
10. The tenant adds that during the pendency of this matter, the respondents maliciously broke into the suit premises and removed all his goods, equipment, documents and other tools of trade without notifying him.
11. The respondents on the other hand, in their written submissions state that the landlord decided to lock the suit premises by adding a padlock on top of the tenant's and that around mid-November 2023, the landlord was informed by the shop attendant of the neighboring shop that the applicant in the presence of policemen broke into the suit premises and towed away the old car and seemingly took all that was in the shop.
12. Furthermore, the landlord submits that the applicant has never been his tenant, did not have any merchandise at the shop and that the tenant is an illegal immigrant with no proper documents hence the lies that he had lost the said documents.
13. The landlord adds that he has been denied rent for 8 months totaling to KES. 88,000 which he claims against the tenant.
14. We have perused the lease agreement dated 23rd March 2023 between the applicant and the 2nd respondent/landlord and we find that the said lease has been signed by both parties and was for a period of 5 years and 3 months.
15. Although the landlord denies having any relationship with the tenant, the said lease agreement as well as receipts of rent payment filed in this matter are proof of a landlord/tenant relationship.
16. If the landlord denies having a landlord/tenant relationship, why would they ask for rent arrears from the applicant?
17. Annexed to the applicant's supporting affidavit dated 26th January 2024 is a letter to the tribunal from the O.C.S Dandora Police station stating that following a court order on 9th November 2023, after the landlord refused to open the suit premises, and upon gaining entry into the suit premises, no goods, tools or equipment was found inside the suit premises and that the same are believed to have been taken by the respondents including a Nissan Avania motor vehicle registration number KBA 585E.
18. We have perused the list of goods and purchasing receipts claimed by the tenant, however the tribunal is unable to establish the validity of the same without a court hearing.



19. Following the analysis above, this tribunal shall order the matter to proceed for viva voce hearing to establish the validity of the amount of KES. 19,902,410 being sought by the tenant as compensation for goods missing as well as the rent owed by the tenant if any.

Issue (b) Who shall bear the costs of the application?

20. As regards costs, the same are in the tribunal's discretion under Section 12(1)(k) of [Cap. 301](#), but always follow the event unless for good reasons otherwise ordered. Costs of the application shall abide the outcome of the hearing.

C. Orders

21. In conclusion, the following orders commend to us; -
- a. Both parties shall comply with Order 11 of the [Civil Procedure Rules](#) within the next 28 days by filing witnesses statements as well as any other supporting documents.
 - b. Costs of the application shall abide the outcome of the hearing.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9th DAY of JULY 2024.

HON. JOYCE AKINYI OSODO (PANEL CHAIRPERSON)

HON GAKUHI CHEGE (PANEL MEMBER)

BUSINESS PREMISES RENT TRIBUNAL

In the presence of:

Tenant present in person.

No appearance for respondents

