



George Mutua t/a Chill Outwines & Spirits v Manthi (Tribunal Case E1223 of 2023) [2024] KEBPRT 698 (KLR) (11 April 2024) (Ruling)

Neutral citation: [2024] KEBPRT 698 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1223 OF 2023
N WAHOME, MEMBER
APRIL 11, 2024**

BETWEEN

GEORGE MUTUA T/A CHILL OUTWINES & SPIRITS TENANT

AND

WILLIAM MANTHI LANDLORD

RULING

1. The Tenant/Applicant commenced these proceedings by the Reference dated 5.12.2024. The same was said to be brought under Section 12(4) of the Landlord and Tenant (Shops, Hotels and Catering Establishments Act) Cap 301 of the Laws of Kenya. The main grievance was that the Landlord/Respondent;

“Threatens to close my shop and evict me from the said property owing to business rivalry with a bar in the park operated by his nephew trading as Grand bar.”
2. With the Reference was filed the notice of motion application of even date which sought for injunctive orders to restrain the Respondent from in any manner whatsoever interfering with the Applicant’s business known as Chill Out Wines & Spirit pending the hearing and determination of the Application of the one hand and the Reference of the other hand.
3. The Applicant was to later file a further affidavit dated 27.12.2023 and eventually the submissions dated 20.02.2024. The case for the Tenant is that;-
 - i. He entered into an oral tenancy agreement with the Respondent for the lease of Room No. 1 within Wilsus Business Park-Tala for a monthly rent of Kshs. 8,000/= which he paid together with a deposit of Kshs. 16,000/= equivalent to 2 months rent.
 - ii. He modified the premises to suit his business known as Chillout Wines and Spirits and obtained all the requisite licenses from the Kitui County Government.



- iii. That he paid the rent and the rent deposit for security in a bank account provided by the Applicant who also permitted him to take over the demised premises.
 - iv. The rent payment and security deposit had been made on the 24.11.2023 and the Respondent purported to sever the relationship by refund of the same into his mpesa account on the 3.12.2024 and required him to move out of the premises.
 - v. Actions by the Respondent were in conflict with Cap 301 and he therefore required the protection of this court.
 - vi. The Respondent was merely fighting him as he was competing against a nephew who also ran a bar.
4. The Applicant submitted that he had satisfied all the requirements in the grant of injunctions as laid down in the case of; *Giella vs Cassman Brown & Co. Ltd.* [1978] EA and that of *Mrao Limited vs First American Bank of Kenya Ltd & 2 Others* [2003] eKLR and therefore prayed to be granted the orders sought.
5. On his part, the Respondent Mr. William Manthi filed the replying affidavit sworn on the 19.12.2023 and further rendered the submissions dated 4.3.2024. The case for the landlord is that;-
- i. Though the Applicant had requested for his bank account details, he was shocked to receive Kshs. 24,000/= from him.
 - ii. They had not agreed on the rent payable and the Applicant was to run a wines and spirits business and not a bar.
 - iii. The establishment of a bar has caused commotion and disturbance at the premises and this made him to refund the Kshs. 24,000/= paid by the Applicant.
 - iv. He had further refunded him Kshs. 16,000/= purportedly paid to him as rent on the 9.12.2023.
 - v. The Applicant had installed facilities at the premises without his consent including chairs and music system, water and was also using other utilities and facilities at the premises without his consent.
6. The Respondent therefore required the Applicant to vacate the demised premises forthwith.
7. I have perused the parties pleadings and submissions and am of the view that the issues to determine in this matter are the following;-
- A: Whether there is a controlled Tenancy Relationship between the Applicant and the Respondent
- B: Whether the Applicant's Application is merited.
- C: Who should bear the costs of the Application.
- Issue No. A: Whether there is a controlled Tenancy Relationship between the Applicant and the Respondent
8. Section 2(1) of the Act provides that;-
- “controlled tenancy means a tenancy of a shop, hotel or catering establishment-



- a. Which has not been reduced into writing or
 - b. Which has been reduced into writing and which
 - i. Is for a period not exceeding five years; or
9. To answer this question, I would simply state that a controlled tenancy has been effectively established in this matter by the conduct and actions of both parties. The Applicant appreciates the Respondent as his landlord and vice versa in their respective pleadings.
10. The Respondent acknowledges the Applicant as his Tenant in his dispositions at paragraphs 2, 4, 5, 6, 7 and 8 of his Replying affidavit sworn on the 19.12.2023. He does not deny that it was by his consent that the Applicant gained possession of the demised premises and that indeed a business has been established therein.
11. It therefore follows that the Tenancy relationship between the parties herein is a controlled one and subject to the Act herein.

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

12. Having established that the tenancy relationship between the parties is a controlled one, the Respondent required to strictly follow the provisions of the Act and the regulations thereof in terminating the same. Refund of the rent paid and security deposit in purported termination is both unlawful and without any effect nor consequence.
13. Section 4(2) of 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.”
14. Further, 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 A in the schedule to these regulations.”
- It is apparent from the foregoing that the intended removal of the Applicant from the demised premises is unwarranted and lacks in any legal backing and therefore the Applicant's Application succeeds.
15. The actions of the Respondent would infringe on the fundamental rights of the Applicant and the Application has therefore satisfied the requirements for the grant of injunctions as laid down in the case of *Giella vs Cassman Brown supra*. Having said that, I note that nothing would be left of the Reference dated 5.12.2024, the same has been fully compromised by the determination of the Application and the same will be allowed in the same terms of the Application herein.

Issue No. C: Who should bear the costs of this Application

16. The actions of the Respondent herein were unwarranted and are an affront to the rule of law and good order in society. I would therefore grant the Applicant costs of both the Application and the Reference.
17. In the final analysis, the orders that commend to me are the following;-



- i. That the purported termination and/or eviction of the Applicant/Tenant from the premises known as Room 1, Wilsus Business Park-Tala is unlawful and of no legal effect nor consequence.
- ii. That the Tenant in paying the rent as it accrues and falls due, shall enjoy quiet possession of the demised premises unless otherwise interfered with in strict compliance with the law.
- iii. That the Reference and the Application herein are settled in terms of orders (1) and (2) hereinabove.
- iv. That the Respondent shall pay to the Applicant costs assessed at Kshs. 20,000/=.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF APRIL, 2024.

HON. NDEGWA WAHOME, MBS

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of;

M/S Gefion for the Respondent

Mr. Mugunti for the Tenant/Applicant

