



**Wambugu & another v Mose (Tribunal Case E624 of 2024)
[2024] KEBPRT 1515 (KLR) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1515 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E624 OF 2024
P MAY, MEMBER
OCTOBER 18, 2024**

BETWEEN

JOYCE WANGUI WAMBUGU 1ST TENANT

DENNIS ORINA OKIOGA 2ND TENANT

AND

MANYONCHO MACHOGU MOSE RESPONDENT

RULING

1. The tenants commenced the present proceedings by filing a complaint dated 30th May, 2024 against the landlord for what they termed illegal interference and locking of the demised premises. Together with the complaint, the tenants filed a notice of motion application under certificate. The motion sought for orders of temporary injunction and for reopening of the demised premises.
2. The application was premised on the grounds set out on the face of the application and those elucidated in the supporting affidavit. The tenants stated that they had been running a car wash business and paying rent as when it fell due. They were therefore taken aback when the landlord evicted them without any justifiable reason.
3. The application was placed before the Tribunal on 4th June, 2024 whereby the tenants were granted interim orders pending the inter-partes hearing. The application was set down for hearing. The landlord opposed the application by way of a replying affidavit where the denied the averments contained in the tenants' application.
4. Subsequently, the landlord filed an application under certificate seeking for break in orders stating that the tenants had fallen into rent arrears for three months and left the premises to dodge paying the arrears. They also noted that there was a suspected electrical fault which required to be rectified.



5. In a different twist, the tenant filed another application under certificate seeking for a senior police officer in the rank of senior inspector to accompany them to enforce the orders that had been granted. According to the tenant the prayer was informed by the fact that the landlord was a retired law enforcement officer who had been intimidating them that he could command any police officer.
6. The Tribunal ordered for an inspection which was undertaken on 1st August, 2024. The findings of the said report were that the premises were accessible but not operational at the time of the visit. The inspector recommended that the court do determine the question of rent as the same was contested.
7. The landlord filed a statement of rent to prove the arrears accrued. The Tribunal has therefore been called to carefully determine the numerous applications filed in the present proceedings.
8. The Tribunal has considered the applications filed, their corresponding affidavits and annexures and the report filed and would proceed as follows:
9. The issues raised by the parties have mutated so sharply to even include the question of perceived intimidation by the landlord. Having analyzed the evidence on record however the Tribunal is of the view that the crux of the present dispute is the question of payment of rent as when it fell due. The Tribunal has to determine whether the rent was paid.
10. The standard and burden of proof provided by the Evidence Act ought to be discharged; he who alleges must prove. Section 107 of the Evidence Act places the burden of proof on the party that alleges. In *Gatirau Peter Munya vs Dickson Mwenda Kithinji & 3 Others* (2014) eKLR the Supreme Court held inter alia:

The person who makes such allegations must lead evidence to prove the fact. She or he bears the initial legal burden of proof, which she or he must discharge. The legal burden in this regard is not just a notion behind which any party can hide. It is a vital requirement of the law. On the other hand, the evidential burden is a shifting one, and is a requisite response to an already discharged initial burden. The evidential burden is the obligation to show, if called upon to do so, that there is sufficient evidence to raise an issue as to the existence of a fact in issue.

11. In the present dispute, the landlord has attached a statement of rent and a letter that was drafted by their advocate to demand the rent arrears due. The tenant in their application did not annex any document that they had paid rent. Even though the documents submitted by the landlord present conflicting figures on the actual rent arrears due, the same prove that the tenant had fallen into arrears. The orders sought by the tenant are equitable in nature. He who comes to equity must come with clean hands.
12. The tenant's duty to pay rent is cardinal and forms the cornerstone of the tenancy relationship. In the case of; *Samuel Kipkorir Ngeno & Anot. vs Local Authorities Pension Trust (Registered Trustees) & Anot.* (2013) eKLR it was held that;

“A tenant first and main obligation is to pay rent as and when it becomes due for the landlord has the right to an income from his investment. Why would a tenant allow himself to fall into such huge arrears of rent? The temporary injunction sought in the present application is an equitable remedy at the court's discretion. He who comes to equity must come with clean hands. A tenant who in in huge arrears is underserving of the courts discretion. The court cannot be the refuge of a tenant who fails to meet his principal obligations of paying rent as and when it becomes due.”



13. In view of the foregoing and given the conflicting figures provided by the landlord, the Tribunal has to determine the actual rent due. The landlord in their demand letter had indicated that the rent due was Kshs. 118,000. The letter was addressed to the tenant on 16th May, 2024, a day after the tenant allegedly vacated the demised premises. Had the tenant promptly paid this amount, would the landlord have followed them for the deficit indicated in the statement? CAP 301 places the onus on the landlord to maintain a rent book. This duty needs to be discharged with great care and accuracy. The Tribunal therefore finds that the rent arrears due is Kshs. 118,000. The landlord having acknowledged that the tenant had vacated the premises on 15th May, 2024 and there being no proof of implementation on the break in orders granted to the tenant, then it would be unjust to demand that the tenant pays the rent accrued during the pendency of proceedings. The relationship between the parties herein has been strained and the passage of time makes it untenable to restore the tenant to the demised premises.
14. In the end the following orders commend itself:
- a. The tenant shall forthwith vacate the demised premises
 - b. The tenant to pay the rent arrears due of Kshs. 118,000/
 - c. The landlord to allow the tenant pick any of their tools that may have been left on the demised premises.
 - d. The complaint dated 30th May, 2024 is settled in similar terms
 - e. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF OCTOBER, 2024

HON. PATRICIA MAY - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

DELIVERED IN THE PRESENCE OF MOGIRE FOR THE LANDLORD AND IN THE ABSENCE OF THE TENANTS

