



**Mwangi v Oluoch & another (Tribunal Case 69 of 2021)
[2023] KEBPRT 598 (KLR) (Civ) (1 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 598 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE 69 OF 2021
A MUMA, AG. CHAIR
SEPTEMBER 1, 2023**

BETWEEN

RICHARD MWANGI LANDLORD

AND

MOSES OLUOCH TENANT

AND

DIRECT O AUCTIONEERS RESPONDENT

RULING

a. Parties & Their Representatives

1. The Applicant Richard Mwangi is the Landlord and the registered owner of the business premises (hereinafter known as the Landlord) located at Block 5/46 Nakuru Municipality which the Tenant contends is located in Plot Number North South lake/ 111669.
2. The firm of M/S Mobegi and Co. Advocates represents the Landlord/ Applicant.
3. The 1st Respondent Moses Oluoch is the Tenant of a rented business space. (hereinafter known as the Tenant)
4. The firm of M/S Mola, Kimosop and Njeru Advocates represents the Tenant/ Respondent

b. Dispute Background

5. The Tenant filed an Amended Notice of Motion dated 4th April 2022 supported by an Affidavit sworn by Moses Maina Oluochi sworn on an even date.



6. The Application inter alia seeks that this Tribunal reviews its orders given on 27th January 2022, recovery and reinstatement of the Tenant/Applicant into possession of the premises in dispute and the return of the Applicant's tools of trade, proclaimed goods and food products at the Landlord's cost.
7. In response to the Application, the 1st Respondent filed a Replying Affidavit sworn by Richard Mwangi on 22nd March 2022. The Tenant/Applicant filed a further affidavit sworn by Moses Maina Oluochi on 6th April 2022 and submissions in support of his Application dated 19th February 2021 on 19th April 2022.
8. This Tribunal issued a Ruling wherein the matter was fixed for hearing of assessment of damages if any on 14th November 2022.
9. The only issue pending determination before the Tribunal is on assessment of damages if any.

c. Issue for Determination

10. It is the contention of this Tribunal that the sole issue that falls for determination is:
 - i. Whether the tenant should be paid damages as pleaded.

d. Analysis And Determination

11. Having already determined this matter before, I shall delve right into the pending issue on assessment of damages.
12. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya Act at section 12 (1) (l) accords the Tribunal as one of its powers the Jurisdiction to;

“Award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill, and improvements carried out by the tenant with the landlord's consent;”
13. In exercise of this Jurisdiction, the Court ordered the parties to file documents in relation to assessment of damages.
14. I take note that only the tenant adhered to this order and filed a report dated 2nd March 2023 named as the Maize Milling Plant Valuation Report.
15. In Tribunal Case No. 8 of 2019 *Robert Ayieko Angoi v Lena Sarange* [2021] eKLR, where the matter was instituted by virtue of a Notice of Termination issued to the tenant by the landlord. The tenant did not file a Reference opposing the said notice and as a result, the Court gave orders allowing Landlord to evict the tenant.
16. The tenant thereafter filed for stay of the above orders and averred that there was no tenancy relationship between themselves and the landlord. When the matter later came up for hearing the Tribunal proceeded to order that the premises be reopened and returned to the landlord.
17. The Tenant aggrieved by the above decision proceeded to appeal through E.L.C Appeal No. 12 of 2019. During the appeal several matters arose which the appellate court felt were not fully addressed by the Tribunal. One such matter was the question on the tenancy relationship between the parties.
18. The appellate court established that the owner of the premises had leased the premises to both the tenant and the landlord without their knowledge. This as a result, created a scenario where the tenant was a sub-tenant of the alleged landlord despite there being no lease agreement between them. This



then explained why the landlord had issued the tenant with a notice to terminate. The Tribunal did not investigate this issue prior to issuing of the Ruling and as such did not give an explanation as to why they returned the premises back to the landlord.

19. Based on the above the Court was of the opinion that the only recourse available for the tenant was damages for loss of tenancy. The Court stated that:

“The appellant’s only recourse is in damages for loss of tenancy. The appellant is at liberty to sue the owners of the demised premises for a refund of the unutilized rent and general damages for breach of the agreement.”

“In view of the foregoing, I find merit in the appeal and allow it. The matter is referred back to the Tribunal for assessment of the appellant’s damages for loss of tenancy.”

20. Based on the holding above, the Court established the Jurisdiction of the Tribunal to assess and award damages in a matter relating to a Controlled Tenancy.

21. In the case of *Antique Auctions Ltd v Pan African Auctions Ltd* [1993] eKLR the Court of Appeal defined the term damages according to the McGregor book on Damages as follows:

“Pecuniary compensation, obtainable by success, for a wrong which is either a tort or a breach of contract, the compensation in the form of a lump sum which is awarded unconditionally, and is generally, but now not necessarily, expressed in English currency

22. It is trite Law that special damages have to be specifically pleaded and strictly proved by evidence. This would include the costs incurred by the Tenant as a result of the eviction or specific damage to property that was in the premises during the eviction.

23. This Court is guided by the decision of the Court of Appeal stated its position on specific damages in the case of *Richard Okuku Oloo vs South Nyanza Sugar Co. Ltd* [2013] eKLR as follows:

“We agree with the learned judge that a claim for special damages must indeed be specifically pleaded and proved with a degree of certainty and particularity but we must add that, that degree and certainty must necessarily depend on the circumstances and the nature of the act complained of.”

24. From an analysis of the documents filed by the Tenant, I note that the Tenant has not specified the type of damages claimed. Further, he has failed to provide documentary evidence to prove the loss as claimed.

25. Additionally, I note that although the Tenant filed and served a statement of assessment of damages, he failed to file a supporting affidavit to introduce the said evidence in support of his claim. As such I find that the claim for damages is not specifically proved and the same cannot be awarded.

e. Orders

26. The upshot is that the:

- a. Tenant’s reference is marked as settled.
- b. The Tenant’s claim for damages is not adequately proven and is hereby dismissed.
- c. Each party to bear its own Costs.

HON A. MUMA



AG. CHAIR /MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. MUMA THIS 1ST DAY OF SEPTEMBER 2023 IN THE ABSENCE OF THE LANDLORD AND KIMOSOP FOR THE TENANT.

HON. A MUMA

AG. CHAIR /MEMBER

BUSINESS PREMISES RENT TRIBUNAL

