



**Mwangi v Ndung'u & another (Tribunal Case E197 of 2023)
[2023] KEBPRT 1307 (KLR) (26 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1307 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E197 OF 2023
CN MUGAMBI, CHAIR
MAY 26, 2023**

BETWEEN

SAMUEL KARANJA MWANGI APPLICANT

AND

JOMO NDUNG'U 1ST RESPONDENT

ELIZABETH NJERI 2ND RESPONDENT

RULING

1. The tenant/Applicant's motion dated 13.4.2023 seeks an order compelling the Respondents to return the tenant's tools of trade confiscated from the suit premises or in the alternative, compensate the tenant with the monetary equivalent thereof. The application has also sought orders of injunction restraining the Respondents from in any manner whatsoever interfering with the tenant's quiet possession of the suit premises. The assistance of the OCS, Kinoo police station and costs of the application have also been sought.

The Tenant's affidavit

2. The tenant's affidavit sworn on 13.2.2023 in support of the application may be summarized as follows:-
 - a. That he is a tenant of the Respondent at the suit premises paying a monthly rent of Kshs. 11,000/=.
 - b. That on or about 23.12.2022, the Respondents illegally closed the Applicant's business premises and have declined to re-open the same despite attempts to amicably resolve the matter.
 - c. That on 19.1.2023, the 2nd Respondent called the Applicant and demanded that he leaves/ vacates the suit premises failing which he would be evicted by any means necessary and on 20.1.2023, the 2nd Respondent confiscated some of the Applicant's tools of trade.



The 2nd Respondent's replying affidavit

3. The affidavit of the 2nd Respondent sworn on 10.3.2023 may be summarized as follows:-
- a. That the monthly rent payable by the tenant is Kshs. 15,000/= effective 1.8.2022, the same having been reviewed.
 - b. That the Applicant has failed to pay rent when due and did not pay rent for September and December and as at the end of October 2022, the tenant owed rent in the sum of Kshs. 28,000/=.
 - c. That on 3.11.2022, the Applicant was issued with a notice to vacate and deliver possession of the premises following the tenant's breaches of the tenancy agreement.
 - d. That the Chief, Kinoo, Location advised the Respondents to lock the tenant's business premises when the tenant failed to show up in the said Chief's offices after being summoned to appear there.
 - e. That the Respondent, the chief and OCS Kinoo together with the Applicant met in the Chief's office where the OCS gave back the tenant the rent the tenant alleged to have paid for the month of December 2022.
 - f. That the tenant failing to remove his items from the suit premises, the 2nd Respondent was advised by the OCS Kinoo Police station, to remove the Applicant's items from the suit premises.
 - g. That there is now a new tenant in occupation of the premises.
 - h. That the tenant owes the landlord rent amounts of Kshs. 49,000/= plus interest of Kshs. 4,500/= and storage at the rate of Kshs. 500/= per day since 20.1.2023.
4. The only issue that arises for determination is whether the tenant/Applicant is entitled to the orders sought in his application.
5. The tenant has deponed that he is a tenant at the suit premises paying a monthly rent of Kshs. 11,000/=. The 2nd Respondent on her part states that this rent was reviewed to Kshs. 15,000/= per month effective 1.8.2022. the Respondent has annexed a rent increment notice (Exhibit EN3). I wish to state at this juncture that the rent increment notice annexed in the 2nd Respondent's exhibit EN3 is not the notice contemplated under Section 4(2) of [Cap 301](#) and it is therefore an invalid notice. For the purposes of this ruling, the rent payable is Kshs. 11,000/= per month absent evidence of the Respondents following the procedure laid down under [Cap 301](#) to alter the terms of tenancy.
6. The 2nd Respondent has deponed that the tenant is in rent arrears amounting to Kshs. 49,000/=. It is obvious that the landlord is basing her calculations on the rate of Kshs. 15,000/= per month which I have already found to be erroneous. Be that as it may, the tenant has not denied that he owes rent and he has further not denied that indeed the 2nd Respondent has put a new tenant in the premises.
- I have also noted the uncontroverted averment by the 2nd Respondent that she sent money to the OCS Kinoo police station who in turn handed over the money to the Applicant in the presence of the 2nd Respondent. The Applicant has not denied receiving the said money which was rent for the month of December 2022.
7. In view of the undisputed facts set out above, it would seem that there does not exist a landlord/tenant relationship between the parties herein, the suit premises having been given out to another tenant.



8. The confiscation of the tenant's goods did not follow any known legal procedure for the levy of distress for rent. It was clearly illegal. To this extent, I have no difficulties in ordering that the 2nd Respondent returns the tenant's confiscated goods without any conditions.
9. The Applicant has prayed for the release of his items or a money compensation for the same in the alternative. The Applicant has not provided the list of the said items and their monetary values. However, since the 2nd Respondent admits to confiscating the said items, I will order that the same be returned to the tenant/Applicant.
10. In the circumstances, I will grant payers 3 of the application dated 13.2.2023. The tenant will also have the costs of the application.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF MAY 2023

HON. CYPRIAN MUGAMBI - CHAIRPERSON

5.2023

In the presence of:-

Ms. Elizabeth Njeri – the 2nd Respondent

In the absence of the Tenant

In the absence of the 1st Respondent

