



**Njeru v Katharaka Primary School (Tribunal Case E002 of 2021)  
[2023] KEBPRT 369 (KLR) (9 June 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 369 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E002 OF 2021  
GAKUHI CHEGE, VICE CHAIR  
JUNE 9, 2023**

**BETWEEN**

**KENETH GITONGA NJERU ..... TENANT**

**AND**

**KATHARAKA PRIMARY SCHOOL ..... LANDLORD**

**RULING**

1. Before me is a motion dated January 23, 2023 in which the tenant is seeking that the defendants be committed to six months jail term for disobeying a court order given on October 19, 2021. He also seeks to be reinstated to his business premises which should be reconnected with electricity.
2. The basis of the application is that this Tribunal granted an order of injunction on October 19, 2021 against interference with the tenant's premises being shop No 41, Katharaka Stage, Chogoria. The tenant complains that even after serving the said order, the Landlord has denied him access to the business premises and refused to restore electricity supply.
3. It is therefore pleaded that the application for contempt of court ought to be allowed to ensure the dignity and authority of the Tribunal, observance and respect of the Law and public confidence in administration of justice.
4. The application is opposed through a replying affidavit of Ashford Kirimi sworn on February 24, 2023 in which he questions the Tribunal's jurisdiction to issue the orders sought.
5. As the question of jurisdiction is a threshold issue and ought to be determined at the threshold stage in line with the decision in the case of the *Owners and Master of the Motor Vessel 'Joey' vs- The Owners and Master of Motor Tugs 'Barbara' and "Steve B"* (2007) eKLR, I shall determine it before considering the merits of the application.



6. The tenant is seeking for committal of the landlord which is an education institution to prison for contempt of court. No provision of the empowering law has been cited in the application. He also seeks for an order for his reinstatement into the business premises.
7. Contempt of court proceedings are quasi- criminal in nature and a person found guilty may be committed to prison for the same. Section 12 (2) of [Cap 301](#), Laws of Kenya provides as follows:-

“(2) A tribunal shall not have or exercise any jurisdiction in any criminal matter proceedings for any offence whether under this Act or otherwise”
8. The said provision therefore ousts the jurisdiction of this Tribunal from punishing for contempt of court as sought by the Tenant. Secondly, this Tribunal is classified as a Subordinate Court under Article 169(1) (d) of the [Constitution of Kenya, 2010](#).
9. Section 5(1) of the [Judicature Act](#) Cap.9, Laws of Kenya provides as follows:-

“(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England and such power shall extend to upholding the authority and dignity of Subordinate Courts”.
10. It is therefore clear that the power to punish for contempt is specifically vested in the High Court and the Court of Appeal and in regard to the application before me, this Tribunal has no such powers to punish the Respondent for alleged contempt of its orders of October 19, 2022.
11. In regard to the second prayer, I note that the Landlord does not deny that the tenant is currently not using the suit premises and depose that it is him who closed the same and run away with rent of Kshs 60,000/- as at January 2023 and that the tenant had rushed to court to shield himself from paying the said rent.
12. According to the landlord, electricity meter and wiring was vandalized whereupon the matter was reported to Ntumu Police Station in terms of annexure “AK2”. As such the landlord prays for dismissal of the tenant’s application.
13. In a further affidavit sworn on March 7, 2023, the tenant reiterates that he was denied access to the suit premises since June 30<sup>th</sup> 2021 when he received an eviction notice from the defendant.
14. In regard to alleged rent arrears, the tenant contends that he inquired about it but was not given sufficient response by the landlord. Prior to issuance of the eviction notice, the tenant deposes that he had no rent arrears and had overpaid rent by a sum of Kshs 6,900/-. He stopped paying rent after receiving the notice to vacate.
15. In regard to electricity supply to the suit premises, the tenant contends that the landlord has never reconnected it despite the Tribunal’s order.
16. I have considered the evidence tendered by both parties and I am convinced that the tenant is entitled to the order for re-opening of the suit premises as it is not normal for a human being to lock his own business premises for the long period it has been inoperational and seek orders for reopening from a Court of Law. I see no prejudice if the order for reopening can be issued in favour of the tenant and the issue of any rent arrears be canvassed together with the tenant’s complaint dated July 14, 2021. I shall allow the tenant to break open any padlocks placed on the doors to the premises by the landlord or any other person.



17. As regards electricity supply to the premises, the tenant is allowed to replace the power meter and the internal wiring of the premises and restore supply with the assistance of the Resident Engineer Kenya Power & Lighting Co. Ltd at the landlord's costs. The costs thereof shall to be offset against future rent or any rent arrears found due and owing by the tenant,
18. In regard to costs of the application, the same shall abide the outcome of the reference/complaint.
19. In conclusion therefore, the following orders commend to me in respect of the application dated January 23, 2023:-
  - a. Prayer (1) of the application dated January 23, 2023 is dismissed for want of jurisdiction.
  - b. Prayers (2) and (3) are granted and the tenant is allowed to reopen the suit premises by breaking open any padlocks placed on the doors thereof with the assistance of the OCS Ntumu Police Station and to continue doing business therein without any interference by the Landlord or its agents.
  - c. The tenant is authorized to replace the electricity power meter and the internal wiring of the suit premises so as to restore supply of electricity to the suit premises with the assistance of the Resident Engineer, Kenya Power & Lighting Co. Ltd at the Landlord's costs. Such costs to be defrayed against future rent or any rent arrears found due and owing by the Tenant.
  - d. Costs of the application shall abide the outcome of the main reference/complaint.
- 20 It is so ordered.

**RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 9<sup>TH</sup> DAY OF JUNE 2023.**

**HON. GAKUHI CHEGE**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

Ruling delivered in the presence of:

Tenant present in person

No appearance for the Landlord

