



Clemesa Boutique Hotel Limited v Mohamed & another (Tribunal Case E601 of 2024) [2024] KEBPRT 1265 (KLR) (30 August 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1265 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E601 OF 2024
CN MUGAMBI, CHAIR
AUGUST 30, 2024**

BETWEEN

CLEMESA BOUTIQUE HOTEL LIMITED TENANT

AND

FARHIYA MOHAMED 1ST RESPONDENT

JOSEPH KIMANI T/A PYRAMID AUCTIONEERS 2ND RESPONDENT

RULING

Introduction

1. The Landlord's Application dated 10.7.2024 seeks the following orders;
 - a. That the Tribunal be pleased to grant declaratory orders finding that the Tenant has violated the conditions imposed on it pursuant to the provisions of Cap 301 of the Laws of Kenya.
 - b. That the Tribunal be pleased to grant orders compelling the Tenant to settle rent arrears for the months of June, 2024 and July, 2024 to the 1st Respondent.
 - c. That the Tribunal be pleased to grant orders terminating the tenancy between the Tenant and the 1st Respondent effective within thirty (30) days of the date of the orders.

The 1st Respondent's depositions

2. The Affidavit of the 1st Respondent in support of the Application may be summarized as follows:-
 - a. That on 27.5.2024, the Tenant made a reference to the Tribunal challenging the levy of distress against it by the Respondents.
 - b. That the Reference and the Application dated 27.5.2024 have been overtaken by events as the Tenant cleared the arrears and was reinstated to the suit premises.



- c. That the Tenant has not paid the rent for the month of June and July 2024.
- d. That the 1st Respondent now finds herself hostage to a Tenant who is unwilling to pay rent in a timely manner and who engages the court in an attempt to delay this matter.
- e. That the delay has severally affected the 1st Respondent's ability to cater for her needs and the upkeep of her family.

The Tenant's depositions

3. The Tenant's replying affidavit sworn on 17.7.2024 may be summarized as follows;-
 - a. That it is true that the Tenant filed a Reference to the Tribunal.
 - b. That at the time the Tenant filed the Reference, it had rent arrears but which arrears were cleared during the pendency of the Reference.
 - c. That the Applicant did not file any response to the Tenant's Application.
 - d. That the rent for the month of May 2024 is in dispute and the Tenant is willing to clear the rent for the month of July 2024 before this matter is concluded.
 - e. That the Tenant prays to be allowed to be paying its rent on or before the 28th day of the month owing to the nature of its hotel business.
 - f. That the landlord/Applicant has not issued the notice to terminate tenancy and the Tribunal can only issue orders to vacate from a premises upon an Application by a party through the prescribed form; consequently, the Landlord's notice to the Tenant to vacate within thirty (30) days is defective and void.

Analysis and determination

4. The only issue that arises for determination in this Application is whether the Landlord is entitled to the orders sought in her Application.
5. It is commonly agreed that the Tenant's Application dated 27.5.2024 has been overtaken by events for the reason that the Tenant paid all the outstanding rent arrears and was granted access to the suit premises.
6. The Landlord in the instant Application has deponed that the rent for the months of June and July has not been paid while the Tenant's position is that the rent for the month of May 2024 was not payable and therefore the only rent outstanding is that of July 2024. I have not found any concrete evidence indicating that the 1st Respondent ever waived the rent for the month of May 2024 and which I now find payable. Consequently, the rent in arrears is that for the month of June and July 2024 as currently presented out by the 1st Respondent. In the circumstances, the 1st Respondent is entitled to levy distress for the rent arrears for the months of June and July 2024 and any other subsequent month that the rent remains unpaid. (See Section 3 of Cap 293, the *[distress for rent Act](#)*).
7. The 1st Respondent has also sought an order terminating the tenancy between the parties effective thirty (30) days from the date of such order. I do not think this order is for granting. The Landlord is required under the provisions of Section 4(2) of the Act to issue a mandatory statutory notice to



terminate tenancy in the absence of which the tenancy cannot be terminated. In this regard, the relevant Section of Cap 301 of the Laws of Kenya provides as follows:-

“4

- (1) notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated and no term or condition in or right or service enjoyed by the tenant of any such tenancy shall be altered otherwise than in accordance with the following provisions of this Act.”

“4

- (2) 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.”

8. The Applicant herein has not issued the aforesaid notice although Counsel for the Applicant/Landlord argues that Section 9(2)(b) of Cap 301 allows the courts to terminate tenancies as they deem fit. I do not think this is the correct position as Section 9(2)(b) of Cap 301 ought to be read together with the provisions of Section 4(1) and 4(2) of Cap 301 reproduced above. Further, Section 9(2)(b) of Cap 301 applies to instances where a Tribunal is making a determination of a Reference filed under the provisions of Section 6(1) of Cap 301. The Landlord in this case is not pursuing a Reference filed pursuant to a notice issued under Section 4(2) of Cap 301 and in the circumstances, the orders of termination sought are not available to the Landlord.
9. The Tenant has sought orders that the Tribunal allows it to pay rent on the 28th day of each month due to the nature of its hotel business. This order cannot be availed to the Tenant for the simplest of reasons that it does not form part of the Tenant’s Application and it would be prejudicial to the Landlord who has had no opportunity to respond to the same.

Further, it is an implied term of the tenancy between the parties that the Tenant ought to pay the rent for the premises in advance. I therefore do not find any merits in the prayer.

Disposition

10. In view of the above findings, and in disposing of the Application, I make the following orders:-
 - a. That the Tenant is in rent arrears for the months of June 2024 and July 2024.
 - b. That the Tenant is to clear the said rent arrears within the next thirty (30) days failing which the Landlord will be at liberty to levy distress for rent using a licensed auctioneer.
 - c. That the Landlord’s prayer for termination of the tenancy between the parties herein is declined.
 - d. That the Tenant’s prayer to be allowed to pay rent on the 28th day of each subsequent month is hereby declined.
 - e. That the Tenant shall bear the costs of the Application.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF AUGUST, 2024.



HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Sugow for the Landlord and in the absence of the Tenant and Counsel.

