



Mwangi v Shiili (Tribunal Case E403 of 2024) [2024] KEBPRT 1284 (KLR) (2 July 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1284 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E403 OF 2024
M MAKORI, MEMBER
JULY 2, 2024**

BETWEEN

MOSES MWANGI APPLICANT

AND

ELIAS BARE SHILI RESPONDENT

RULING

1. The Applicant filed a Notice of Motion Applicant Dated 28th March, 2024 together with a Reference Dated 28th March, 2024 seeking a raft of orders against the Respondent and supported by the affidavit dated of the Respondent Dated 28th March, 2024.
2. The said application was opposed vide a Replying Affidavit Dated 5th April, 2024 and further supported by the Applicant's Supplementary Affidavit Dated 30th April, 2024.
3. The Applicant contends that the Respondent is attempting to illegally evict him from the suit property even when he has paid rent for all the duration that he has been in occupation of the demised property.
4. There exist a Lease Agreement Dated 1st September, 2023 between the Applicant and the Respondent. The said lease does not indicate how the rent for the said premises is to be paid. The receipts produced by the Applicant indicates that the rent of kshs 40,000/= was paid to Shamsha Haji Sigara.
5. The mode of payment has been consistent and it is paid up to date and as thus I have no doubt that all the alleged outstanding arrears have been paid to Shamsha Haji Sigara and receipt issued.
6. Based on the foregoing, the only issue for this court's determination is whether the Applicant has defaulted in Rent Payment to warrant distress as done by the Respondent?



Analysis And Determination

7. Before delving into the issue I wish to note that Section 4(1) of Cap 301 provides that no tenancy shall be terminated, or no term or condition, or right or service enjoyed by the tenant shall be altered otherwise than in accordance with the provisions of the Act.
8. The Act further provides for the grounds on which the Landlord may seek to terminate the tenancy in Section 7 the grounds stated under this provision and which are applicable herein include; -
 - i. That the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable;
 - ii. That the tenant has committed other substantial breaches of his obligations under the tenancy, or for any other reason connected with the tenant's use or management of the premises comprised in the tenancy; and
 - iii. That on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises;
9. The applicant has demonstrated in clear terms how rent for the demised property has been paid, how much has been paid and to whom. This Court notes that the Respondent has not denied any involvement with Shamsha Haji Sigara.
10. The Lease Agreement Dated 1st September, 2023 does not indicate how rent is to be paid and how much is payable. In absence of such information, the Honourable Court is only left to presume that indeed the Applicant has been paying rent as agreed.
11. This court is alive to the facts that it is only upon nonpayment of Rent an applicant that the Respondent can decide and/or is allowed to levy distress over the demised property.
12. The right to levy distress is reserved under Section 3 of the Distress for Rent Act, Cap 293 of the Laws of Kenya, which provides; -

“subject to the provisions of this Act and having any rent or rent service in arrears and due upon a grant, lease, demise or contract shall have the same remedy by distress for the recovery of that rent or rent service as is given by the Common Law of England in a similar case.”
13. In seeking to make the appropriate orders in view of the foregoing, I am guided by section 12(1)(e) of Cap 301 which grants the Tribunal power; -

“To make orders upon such terms and conditions as it thinks fit for the recovery of possession and for the payment of arrears of rent and mesne profits which orders may be applicable to any person whether or not he is a Tenant, being at any material time in occupation of the premises comprised in a controlled tenancy.”
14. That it is with no doubt in my mind that Applicant there is not in arrears and the Respondent has not demonstrated justifiable reasons why they should be entitled to distress for the alleged rent owing from the Applicant.



15. Though there exist Orders from Environment and Land Court on Status Quo, the Status Quo is defined and does not include payment of rent or otherwise as thus they do not divest this Honourable Court mandates to give orders on rent payment.
16. Before concluding this ruling, I wish to adopt what the superior court stated in the case of Samuel Kipkori Ngeno & Another – vs- Local Authorities Pension Trust (Registered Trustees) & Another (2013) eKLR at paragraphs 9 and 12 as follows: -
- “9 A tenant’s 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....”
- “12 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 is in huge arrears of rent is underserving the court’s discretion. The court cannot be the refuge of a tenant who fails to meet his principle obligation of paying rent as and when it becomes due”.
17. In the circumstances of this case, I will therefore allow the Applicant’s Application Dated 28th March, 2024 in the following terms; -
- i. The Respondent, his agents, servants, assignees, employees, or people acting under his instructions and Particularly Recovery Concept Auctioneers are Permanently Restrained from encroaching upon, occupying, alienating, constructing, taking any step to enter or in any way whatsoever interfering with the Applicant’s Quiet Possession of Premises Known as Garissa Township/Block 1/72 situated in Garissa Town.
 - ii. The OCS Garissa Township Police Station to ensure compliance.
 - iii. Each party to bear their own costs.

HON. MIKE MAKORI

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY ON THE 2ND DAY OF JULY, 2024.

