



**Kamwara v Mwaria (Tribunal Case E018 of 2022)
[2023] KEBPRT 418 (KLR) (Civ) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 418 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E018 OF 2022
A MUMA, MEMBER
JULY 21, 2023**

BETWEEN

EZEKIEL NGOCHI KAMWARA TENANT

AND

JOHN MWARIA LANDLORD

RULING

Parties and Their Representatives

1. The Tenant/Applicant (hereinafter referred to as “the Tenant”) has rented out the unidentified business premises (hereinafter referred to as “the premises”) situate at Marimanti, Tharaka Nithi County where he has been operating a hotel business.
2. The Tenant appears in person.
3. The Landlord/Respondent (hereinafter referred to as “the Landlord”) has let out the unidentified business premises situate at Marimanti, Tharaka Nithi County to the Tenant.
4. The Firm of M/S Kuria Karatu and Company Advocates appears for the Landlord.

Dispute Background

5. The Tenant approached this Tribunal vide a Reference dated June 14, 2022 that was followed up by an application dated June 15, 2023 wherein he sought injunctive orders against the Landlord.
6. This Tribunal granted the above mentioned injunctive orders vide the order issued on June 17, 2022.
7. Thereafter, the Landlord filed a Replying Affidavit dated September 19, 2022 opposing and replying to the Tenant’s application and also sought the setting aside of the orders issued on June 17, 2022.



8. Additionally, the Landlord filed a Further Replying Affidavit to dated November 9, 2022 where he faulted the Tenant for failing to meet his rent obligations as required.
9. On December 29, 2022, the Tribunal directed the parties to file their respective Submissions. Neither of the parties complied with this direction.
10. On February 7, 2023, this Tribunal directed the Tenant to file and serve an application for damages in the alternative.

The Tenant's case

11. The Tenant's alleges that the Landlord threatened to evict him from the premises. Further, the Tenant alleges that the Landlord disconnected electricity to the premises on May 12, 2022.
12. The Tenant claimed that by disconnecting the electricity, the Landlord exposed him to the risk of suffering huge damages and loss.

The Landlord's Case

13. The Landlord claims that the Tenant has failed to meet his rent obligations as directed by this Tribunal.
14. Further, the Landlord said he was not involved in disconnecting electricity to the premises as this was done by the Kenya Power and Lighting Company due to the Tenant's interference with the main electricity switch.
15. According to the Landlord, he increased the monthly rent for the premises by Kenya Shillings Five Hundred Shillings Only (Kes 500/=) due to an increase in water prices.
16. The landlord also stated the Tenant has not been paying rent forcing the Landlord to issue a Notice under the Act.

Issues for Determination

17. From the background and the parties' respective cases provided hereinabove, this Tribunal finds the following issues for determination:
 - i. Whether the Landlord ought to evict the Tenant from the premises?
 - ii. Whether the Tenant is entitled to damages?

Analysis and determination

i. Whether the landlord ought to evict the tenant from the premises?

18. I have given full consideration to the Application and the Response thereto. The Tenant has claimed that the Landlord has threatened to evict him without issuing him with a Notice of Termination of Tenancy as required by the Act.
19. Section 4 (2) of the *Landlord and Tenants (Hotels, Shops and Catering Establishments) Act* Cap 301 ("the Act") provides as follows;

"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."



20. In the present matter, the Landlord has not produced any evidence to demonstrate that a notice in the prescribed form was issued to the Tenant.
21. That notwithstanding, I also find that the Tenant has not provided evidence to demonstrate that he has been meeting his rent obligations as required and as ordered by the Tribunal on June 17, 2022.
22. Further, pursuant to the Order issued on June 17, 2022 his Tribunal ordered the Tenant to pay the rent for the premises for the months of June and July. The Tenant did not produce any evidence to show that he complied with said order.
23. I also wish to note that on October 31, 2022, this Tribunal had granted leave to the Landlord to distress for rent in the event that the Tenant failed to meet his rent obligations.

ii. Whether the Tenant is entitled to damages?

24. On February 7, 2023 Tribunal directed the Tenant to file and serve an application for damages.
25. Pursuant to those directions, the Tenant filed a Bill of Costs dated March 27, 2023 that was neither supported by cogent documentation that justified the grant of those costs.
26. On the issue on electricity disconnection, I find that the Tenant failed to prove that the Landlord was at fault and/or responsible for the same. On the other hand, the Landlord demonstrated that the Tenant had agreed to install a sub-meter to the premises.
27. Additionally, the Landlord also demonstrated that the electricity was disconnected by the Kenya Power and Lighting Company.
28. In *Joseph Kipkorir Rono v Kenya Breweries Limited & Another* Kericho HCCA No 45 of 2003, Kimaru, J held that:

“In current usage, special damage or special damages relate to part pecuniary loss calculable at the date of the trial, whilst general damages relate to all other items of damage whether pecuniary or non-pecuniary. If damages are special damages they must be specifically pleaded and proved as required by law.”

29. Similarly, in *Hahn v Singh*, Civil Appeal No 42 of 1983 [185] KLR 716, the Court of Appeal held as follows;

“Special damages must not only be specifically claimed (pleaded) but also strictly proved... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”

30. In the present manner, I find that the Tenant has failed to prove his claim for damages and therefore I cannot proceed to issue any in the Bill of Costs dated March 27, 2023 sum as damages.
31. The claim for costs was dependent on the Kenya Power and Lighting which has an unpaid bill pending as evidenced in the bill annexed and therefore not the Landlords brinkmanship.

Determination

- a. In the upshot, I find that the Tenant has failed to prove his case on a balance of probability and proceed to dismiss the application dated 15th June 2022 in the following terms;



- b. The Landlord is at liberty to take back vacant possession or break-in
- c. OCS Marimanti Police Station to ensure compliance.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 21ST DAY OF JULY 2023 IN THE PRESENCE OF EZEKIEL IN PERSON AND IN THE ABSENCE OF THE LANDLORD.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

