



Moraa v William (Tribunal Case E007 of 2023)
[2023] KEBPRT 419 (KLR) (Civ) (21 July 2023) (Ruling)

Neutral citation: [2023] KEBPRT 419 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E007 OF 2023
A MUMA, MEMBER
JULY 21, 2023

BETWEEN

NAOMI MORAA TENANT

AND

DAMARIS MORAA WILLIAM LANDLORD

RULING

A. Parties And Representatives

1. The applicant Naomi Moraa is the tenant and rented space on the suit property known as The Woods in Bomet (hereinafter known as the 'tenant')
2. The Firm of Maosa & Co. Advocates represent the applicant/tenant in this matter.
3. The Respondent Damaris Moraa is the landlord and the owner of the suit property and rented out space to the tenant. (hereinafter known as the 'landlord')
4. The firm of Ochoki & Company Advocates represent the Landlord/Respondent in this matter.

B. The Dispute Background

5. The Tenant filed a Reference dated February 6, 2023 and a Notice of Motion Application dated February 3, 2023 under section 12 (4) of the [Landlords and Tenants \(Shops, Hotels and Catering\) Establishments Act](#) Cap 301. The tenant was seeking orders that the landlord be ordered to provide unlock the premises and that they are restrained from evicting them from the premises.
6. The landlord filed a Replying Affidavit dated 3rd March 2023 disputing the averments made by the tenant



C. The Tenant's Claim

7. The tenant/applicant filed a Reference dated 6th February 2023 and an application dated 3rd February 2023.
8. The tenant has also filed a further affidavit in response to the Landlord's replying affidavit.

D. The Landlord/respondent's Claim

9. The Landlord/Respondent filed a replying affidavit dated 3rd March 2023 in opposition to the tenant's application.

E. List Of Issues For Determination

10. The issues raised for determination are as follows;
 - a. Whether the orders sought by the Tenant in their application are merited?

F. Analysis And Findings

Whether the orders sought by the Tenant in their application are merited?

11. The tenant approached this tribunal by way of the reference dated 6th February 2023 seeking protection orders against the landlord and claiming that the landlord had issued them with an oral notice requiring them to vacate the premises.
12. The Landlord responded to the application and stated that they entered into an agreement with the tenant in which they agreed that the tenant would construct eight rooms behind the front part of the premises and that the same would be reimbursed by the landlord through non-payment of rent.
13. The landlord acknowledges that the tenant indeed proceeded and constructed the premises but that the same were not up to the required standard.
14. That as a result of the above, a dispute arose between the two parties and the same was mediated on by the area chief. The mediation by the chief culminated in an agreement dated 7th December 2022 and signed by both parties.
15. As per the agreement the parties decided that with effect from 15th December 2022 the landlord would take over operation of the 8 rooms which are behind the front part of the building and that the tenant would retain control of the front part of the building where her business premise is located.
16. The landlord has additionally provided in their Replying Affidavit that for the period when the constructions will be ongoing estimated to be until October 2023, the landlord would waive the rent payable by the tenant.
17. Having perused the file and gone through the pleadings filed by the parties I fail to understand why the tenant wants to go back on her word having agreed to allow the landlord to carry out the construction of the premises as per their agreement.
18. The landlord seems to be gracious enough and has allowed the tenant to retain possession of the suit property and allowed them to do so without payment due to the disruptions that may be caused by the intended constructions.
19. I am persuaded to uphold the terms of the agreement as entered into by the parties and allow the landlord to carry out the constructions.



20. In light of the foregoing, I therefore proceed to order as follows;

G.Orders

- a. The upshot is that the Tenant's Reference dated 6th February 2023 and the application dated 3rd February 2023 are hereby dismissed.
- b. The landlord shall carry out the renovations on the building as agreed within 10 months and thereafter hand over possession to the tenant to allow them to continue with their business.
- c. Parties to agree on new rent applicable subject to the additional rooms failure to which either party can apply for variation of rent.
- d. In the meantime, the tenant shall continue to carry out business on the front part of the premises where her business is located and to resume paying agreed rent from November 2023 in consideration for the same.
- e. No orders as to costs.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Rulingt dated, signed and delivered virtually by Hon A. Muma this 21st day of July 2023 in the presence of Ms. Mugute for the landlord and Nyandoro for the Tenant.

HON A. MUMA

MEMBER

****BUSINESS PREMISES RENT TRIBUNAL**

