



**Omosa v Gacheru (Tribunal Case E656 of 2023)
[2024] KEBPRT 448 (KLR) (5 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 448 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E656 OF 2023
P KITUR, MEMBER
APRIL 5, 2024**

BETWEEN

FRED MONIKI OMOSA TENANT

AND

JANE WANGARI GACHERU LANDLORD

RULING

A. Parties and Representatives

1. The Applicant Fred Moniki Omosa is the tenant and has rented out space for a business from the Landlord in Kahawa Sukari within Nairobi County. (hereinafter known as the 'tenant')
2. The Tenant is represented by M/s Eric Mose & Company Advocates.
3. Jane Wangari Gacheru
4. Jane Wangari Gacheru is the Landlord and is represented by M/S Eric Mose & Company Advocates.

B. The Dispute Background

5. The Tenant avers that he has been running a hotel business in the Landlord's premises for a period of over 9 years as at the time of filing of the pleadings.
6. He further states that he has always met his obligations as a tenant until the year 2020 when the COVID-19 pandemic landed him in financial constraints as he had to close his business for a prolonged period of time in compliance with directives from the Ministry of Health.
7. The Tenant additionally states that there was a fire tragedy at the premises that razed down his business sometime in October 2020 which set him back even further financially as he had to rebuild the destroyed structures presumably housing his business.



8. The Tenant alleges that the Landlord has issued him with a verbal termination notice which is contrary to Cap 301.
9. The Tenant, however acknowledges that as at the time of filing the Complaint, he was in arrears of Kshs. 90,000/=.
10. As a result of the above, the Tenant has filed a Complaint and a Notice of Motion application dated 3rd July 2023 under section 12(4) of the Landlords and Tenants (Shops, Hotels and Catering) Establishments Act Cap 301. The Tenant was seeking among others, orders restraining the Landlord and their agents from evicting, harassing or intimidating the Tenant or interfering with the Tenancy and that he be granted 90 days to clear his outstanding arrears.
11. The Landlord in response to the Tenant's Reference and Application filed a Replying Affidavit dated 24th October 2023 claiming that the sole issue in dispute is nonpayment of rent owing to the Tenant's refusal and / or neglect of that obligation.
12. She further states that as at the date of filing of the Replying Affidavit, the arrears stood at Kshs. 184,000/=.
13. The Landlady further contests the alleged renovations on the suit property to the tune of Kshs. 1,200,000/= stating that none was done and that if any was done, then the same was done outside her consent and that there has been no proof of any expenditure to the quoted amount.

C. List of Issues for Determination

14. The issues raised for determination are as follows;
 - a. Whether the Tenant has defaulted in his obligation to pay rent and as a result whether the Landlord is entitled to vacant possession of the premises?

D. Analysis and Findings

Whether the Tenant has defaulted in his obligation to pay rent and as a result whether the Landlord is entitled to vacant possession of the premises?

15. The Tenant approached the Tribunal by way of a Complaint dated 3rd July 2023 seeking orders restraining the Landlord and their agents from evicting, harassing or intimidating the Tenant or interfering with the Tenancy.
16. The Landlord in his Replying Affidavit dated 24th October 2023 claiming that the sole issue in dispute is nonpayment of rent owing to the Tenant's refusal and / or neglect of that obligation.
17. The issue of outstanding arrears has been stated by the Landlord as having risen to Kshs. 278,000/= as at the date of filing of submissions.
18. No evidence has been tendered to the contrary by the Tenant.
19. This remains uncontroverted.
20. The requirements for the grant of temporary orders of injunctions are now well settled as were discussed in the celebrated case of *Giella vs Cassman Brown*.



21. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of Nguruman Limited vs Jan Bonde Nielsen & 2 others CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;
- “in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favor.”
22. Guided by the Court of Appeal’s holding, I wish to interrogate as to whether the Applicant has established a *prima facie* Case.
23. There is no doubt that the remedies sought in the instant application are equitable. Equity requires that whoever comes to a court of equity must do so with clean hands. It is also required that he who seeks equity must do equity. The tenant herein is obliged by law to pay rent for the premises as and when the rent falls due. There is documentation on record and the tenant’s own admission acknowledging to being indebted to the Landlord.
24. The tenant has admitted to having defaulted in payment of rent. The default constitutes a breach of their contractual obligations.
25. The Landlord has been gracious enough to accommodate the tenant but the same has not been reciprocated by the tenant in their obligation to pay rent or clear their arrears.
26. In light of the foregoing, I therefore proceed to order as follows;

E. Orders

- 27.
- a. The upshot is that the Tenant’s Reference and Application dated 3rd July 2023 are hereby dismissed in the following terms;
 - b. The tenant shall clear the arrears of Kshs. 184,000/= as at 24th October 2023 in addition to any rent and incidental costs accrued to date no later than 30th April 2024.
 - c. In default, the Landlord is at liberty to proceed to levy for distress of the rent.
 - d. The Tenant shall additionally hand over vacant possession of the premises to the Landlord on or before 31st May 2024 failure to which the Landlord shall be at liberty to break in and enter with the assistance of OCS Kahawa Sukari Police Station or any other Police station close by.
 - d. This Ruling settles the Complaint dated 3rd July 2023.
 - f. Costs are awarded to the Landlord assessed at Kshs. 47,000/=.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR THIS 5TH DAY OF APRIL 2024 IN THE PRESENCE OF WAMBUI MWAI FOR THE TENANT AND IN THE ABSENCE OF THE LANDLORD.

HON P. KITUR - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

