



**Okuku v Okatch (Tribunal Case E013 of 2024)
[2024] KEBPRT 1205 (KLR) (23 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1205 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E013 OF 2024
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
AUGUST 23, 2024**

BETWEEN

SAMSON OKUKU TENANT

AND

WILSON OKATCH LANDLORD

RULING

1. Through a reference dated 30th April 2024, the tenant moved this Tribunal under Section 12(4) of [Cap 301](#), Laws of Kenya complaining that the landlord had locked his business premises on account of fear that he was likely to disappear with rent arrears of Kshs 17,500/=
2. The tenant therefore sought for ex-parte orders directing the reopening of the suit premises and restraining the landlord from locking the same pending the hearing and determination of the case. Interim orders were issued on 2nd May 2024 pending hearing inter-partes.
3. The tenant simultaneously filed an application of even date seeking the same orders set out in the reference. The application is supported by the tenant's affidavit in which he deposed that he had been paying rent gracefully until when he fell sick which occasioned him financial difficulties. As a result, he accrued rent arrears of Kshs 44,000/=. He however managed to settle part of it and by the time of filing the instant suit, he owed the landlord a sum of Kshs 17,500.
4. The landlord however closed the business premises thereby preventing the tenant from earning money to pay the said arrears. As a result, the tenant deposes that he lost approximately Kshs 40,000/= on account of the closure. The said closure precipitated the filing of the instant suit.
5. On 16th May 2024, this matter came up for physical hearing during the Tribunal sitting at Kisumu and after hearing representations from both parties, the tenant was directed to avail security for payment of any rent arrears found due before the reopening of the suit premises. The landlord was required to file a statement of rent account in respect of the sum of Kshs 183,300/= claimed against the tenant.



The tenant was also directed to file his evidence of payment of rent for the period of claim. The matter was therefore set for mention on 17th May 2024.

6. On 17th May 2024, both parties appeared before us and the tenant indicated that he had come with the rent payment records. He stated that he has been paying Kshs 8000/= as monthly rent after the initial rent of Kshs 10,000/= was reduced during the Covid-19 pandemic. He presented as evidence, an audio recording of a conversation between him and the landlord confirming the same.
7. The tenant also presented one Isaac Nyagol Ochaka to stand surety for him using the title deed for Land Parcel No. Siaya/Usigu/4547 which was deposited with the Tribunal as security for the due performance of any decree that may be passed in this matter. The said security was to remain with the Tribunal until the conclusion of this case.
8. Following provision of the said security, the landlord was ordered to reopen the suit premises and in default, the tenant was authorized to break it open and regain possession with the assistance of area chief. The landlord was also directed to serve the tenant with the filed statement of rent account.
9. On 17th July 2024, the matter came up for mention and the landlord submitted that the tenant owed him Kshs 183,370/= as rent arrears for the period March 2019 to 8th April 2024. He relied on the filed receipts and statement of rent account showing that rent per month is Kshs 10,000/=
10. On the other hand, the tenant denied owing rent arrears to the landlord except for June and July 2024 stating that his monthly rent is Kshs 8000/= as opposed to the landlord's claim of Kshs 10,000/= per month.
11. We are therefore required to determine the following issues;
 - a. What is the applicable monthly rent for the suit premises?
 - b. Does the tenant owe any rent arrears to the landlord?
 - c. Who is liable to pay costs of the suit?
12. The tenant has throughout the instant proceedings maintained that his monthly rent was initially Kshs 10,000/= but it was reviewed downwards six months thereafter to Kshs 8,000/=. He relies on the receipt dated 8th September 2019 issued by the landlord through which he paid Kshs 24,000/= for the months of September, October and November 2019. He also relies on another receipt dated 14th December 2019 through which he paid Kshs 24,000/= as rent for the months of December 2019, January and February 2020 indicating no balance.
13. He further relies on a receipt dated 1st September 2021 showing a balance of Kshs 320/= after paying Kshs 7,000/= arguing that he had pre-paid rent. On 15th June 2021, the tenant paid Kshs 20,000/= being rent for June, July and August 2021 leaving a balance of Kshs 4,000/= which added to the previous balance totaled to Kshs 4320/= as indicated on the receipt dated 15th June 2021 issued by the landlord.
14. The tenant relies on the audio clip filed in this Tribunal in which the landlord's voice is captured explaining how he reduced the monthly rent from Kshs 10,000/= to Kshs 8,000/=. In the audio clip, the landlord claimed that the tenant owed him Kshs 23,070/= in rent arrears. The landlord did not deny the contents of the said audio clip recording.
15. The landlord is accused of failing to issue receipts to the tenant for payments made to him. The tenant narrates how he made payments to the landlord and includes a sum of kshs 700/= for a 3-inch pipe taken on credit by him thereby reducing the admitted rent arrears to Kshs 16,090/=. The tenant



- claims that he gave the landlord electrical materials worth Kshs 16,000/= on credit which he personally installed at the former's Uyoma home.
16. According to the tenant, the period in dispute translates to 60 months and after reducing the first 6 months when monthly rent was Kshs 10,000/=, we are left with 55 months up to and including April 2024. The total rent payable for the said period is Kshs 440,000/=. He paid a total of Kshs 476,310/= inclusive of Kshs 60,000/= for the initial 6 months. As such, the tenant argues that after deducting the amount paid from the total payable, the balance comes to Kshs 23,690/=.
 17. The tenant explains that he serviced the door to the suit premises at a total cost of Kshs 6,900/= and supplied the 3-inch pipe at a cost of Kshs 700/= to make altogether Kshs 7600/=. Upon deducting the said amount from the previous balance, the total comes to Kshs 16,090/= which is the amount initially admitted.
 18. The tenant claims that he supplied the landlord electrical materials which he personally installed at his Uyoma home at a cost of Kshs 16,000/= as indicated in the receipts attached to his documents. This leaves a balance of Kshs 90/= only.
 19. We have seen the landlord's statement of rent account showing a balance of Kshs 183,370/= in rent arrears. The rent charged is Kshs 10,000/= per month but shows a consistent payment of Kshs 8,000/= for several months. There is no documentary or other evidence showing that the landlord ever demanded any payment beyond the sum of Kshs 8,000/= during the period of 55 months in dispute. He does not deny the contents of the audio recording in which he concedes that the monthly rent payable for the suit premises was reduced from Kshs 10,000/= to Kshs 8,000/=.
 20. In view of the foregoing analysis, we find and hold that the monthly rent payable by the tenant for the suit premises is Kshs 8,000/=. We further hold that as at April 2024, the tenant owed a sum of Kshs 90/= only to the landlord which he is directed to pay together with any subsequent accrued arrears within the next 21 days from the date hereof and in default the landlord shall be at liberty to use lawful means including distress to recover the same.
 21. Costs of every action before this Tribunal are at our discretion under Section 12(1)(k) of [Cap 301](#) but always follow the event unless for good reasons otherwise ordered. We note that the dispute herein escalated to this court due to both parties' failure to sit down and agree on the monthly rent payable and any rent arrears owing by the tenant. In the premises, we shall order each party to meet own costs.
 22. In conclusion, we make the following final orders under Section 12(4) of [Cap 301](#) on the tenant's application and reference dated 30th April 2024;
 - a. The monthly rent payable by the tenant to the landlord for the suit premises is Kshs 8,000/=.
 - b. The tenant owed the landlord a sum of Kshs 90/= as at April 2024 which he is hereby ordered to pay together with any subsequent accrued rent arrears within the next 21 days hereof and in default, the landlord shall be at liberty to use lawful means including distress to recover the same.
 - c. Each party shall bear own costs of this case.

It is so ordered.

RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 23RD DAY OF AUGUST 2024.

HON GAKUHI CHEGE- PANEL CHAIRPERSON

HON JOYCE A OSODO - PANEL MEMBER



In the presence of;

Tenant in person

Landlord in person

