



Jonathan N. Nyongesa t/a Megon Enterprises v Cardio Cloud Africa Limited & 8 others (Tribunal Case E133 of 2022) [2024] KEBPRT 855 (KLR) (5 July 2024) (Ruling)

Neutral citation: [2024] KEBPRT 855 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E133 OF 2022
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
JULY 5, 2024**

BETWEEN

JONATHAN N. NYONGESA T/A MEGON ENTERPRISES LANDLORD

AND

CARDIO CLOUD AFRICA LIMITED 1ST TENANT

LOYCE NAWANJAYA WANGIA & 7 OTHERS 2ND TENANT

RULING

1. The Landlord moved this Tribunal through a motion dated 23rd January 2024 under Section 12(1)(e) and (h) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301, Laws of Kenya seeking for orders that the application be certified urgent and service thereof be dispensed with in the first instance. He also sought for an order that this Tribunal be pleased to re-open the file on the part of the 7th Tenant namely Leonard Juma Kong'ani, whose issue the Tribunal was yet to make a final decision on.
2. It is the Landlord's case that there was an oversight on the part of his Counsel who failed to point out issues relating to the 7th Tenant/Respondent who was in arrears of rent in the sum of Kshs 1,100,000 as at December 2023. The landlord also seeks for costs of the application to be provided for.
3. The application is supported by the affidavit of Jonathan N. Nyongesa and the following grounds; -
 - i. On the 18th July 2023, the Tribunal issued its final Order in this matter and closed the file notwithstanding the issue on the part of the 7th Tenant.
 - ii. There is a pending issue on the part of the 7th Tenant who closed the Business premises and has not paid rent arrears to date to the Applicant in the sum of Ksh 1,100,000 which the Tribunal was yet to deal with to finality.



- iii. The Applicant/ Landlord has incurred loss in terms of rent arrears owing by the 7th Tenant who has persistently locked the business premises and failed to pay rent when due which had accumulated to the tune of Ksh 1,100,000.
 - iv. The Landlord therefore seeks for an order allowing him to break in and access the premises No. G001 occupied by the 7th Tenant with the supervision of the OCS Bungoma.
 - v. It is only fair and just that the Tribunal do re-open this case on the part of the 7th Tenant and deal with the pending issues left out through an oversight on the part of the Counsel for the applicant.
 - vi. Unless the orders sought are granted, the Applicant stood to suffer economic loss which will not be easy to recover from the 7th Tenant.
4. The application was served in terms of the affidavit of service of Kenneth K. Dindi sworn on 25th March 2023 filed herein and thereafter, the same process server effected service of a hearing notice in respect of the application in terms of his affidavit sworn on 3rd May 2024 but there was no response filed to the said application.
 5. Section 12(1)(ii) of Cap. 301, Laws of Kenya gives this Tribunal power to vary or rescind any order made by it under the provisions of the said Act.
 6. In absence of a response to the application and for the reasons enumerated in the supporting affidavit and the grounds on the face of the application, we have no reason to deny the Applicant the reliefs sought therein.
 7. Consequently, the application is allowed with costs to the Landlord against the 7th Tenant/ Respondent.

It is so ordered.

RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 5TH DAY OF JULY 2024

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HON. GAKUHI CHEGE

PANEL CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

.....
HON. JOYCE A OSODO - PANEL MEMBER

BUSINESS PREMISES RENT TRIBUNAL

BUSINESS PREMISES RENT TRIBUNAL

In the presence of:-

Makhandia for the landlord/applicant & in absence of the 7th tenant/respondent

