



**Capri Car Care Limited v Pulse Fitness Centre Limited (Tribunal Case
E657 of 2023) [2024] KEBPRT 643 (KLR) (3 May 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 643 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E657 OF 2023
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
MAY 3, 2024**

BETWEEN

CAPRI CAR CARE LIMITED TENANT

AND

PULSE FITNESS CENTRE LIMITED LANDLORD

JUDGMENT

1. Through a further amended reference dated 19th January 2024 filed pursuant to Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Capri Car Care Limited, a Company incorporated under the Laws of Kenya and a Tenant of Pulse Fitness Centre Limited moved this Tribunal seeking for injunctive reliefs against the Landlord staying and preventing the transfer/ termination of the Lease in relation to all that property known as car wash and coffee shop at New Day Shopping Centre erected on Land Reference Number 3734/407, Othaya Road, Nairobi.
2. The Applicant is a Tenant at the premises known as New Day Shopping Centre, located at Land Reference Number 3734/407, Othaya Road, Nairobi where it has put up a car wash known as Capri Car Care Car wash having entered into a Lease Agreement with the Landlord/Respondent.
3. The lease was agreed upon to be for for a duration of five years and three months, with the option for renewal upon expiration.
4. Clause 10 of the lease agreement stipulated that either party could terminate the tenancy by providing a three-months written notice. According to the tenant, this provision aligns the tenancy with Section 2(1)(b)(ii) of Cap. 301, as the termination clause does not hinge on any breach of covenant by either party.
5. As part of the Tenant's obligations, a three-months deposit amounting to Kshs. 940,000.00 was paid, along with an additional goodwill payment of Kshs. 500,000.00.



6. The Tenant avers that the verbal understanding between the Landlord's representative and the Tenant's representative at the time of paying the goodwill was that since the Tenant was going to be the first one to operate a car wash on the premises, the goodwill paid would be refundable at the time of the Tenant's exit from the premises.
7. It was the parties' understanding when the goodwill was paid that the said goodwill would be obtained from the incoming tenant once the tenant exits the premises.
8. Subsequent to taking possession of the premises, the Applicant pleads that it invested Kshs, 3,000,000.00 in substantial improvements of the premises, Part of this money comprised of Kshs.805,000.00 which the Tenant paid to the Landlord for the terrazzo tiles used in the premises although this cost was ideally supposed to be the Landlord's cost since the terrazzo tiles form part of the permanent fixtures on the premises which belongs to the Landlord. This money is therefore legally refundable to the Tenant.
9. On 1st July, the Landlord/Respondent issued the Tenant/Applicant a letter dated 1st July 2023 terminating the lease. The letter further threatened eviction of the Tenant from the premises within 24 hours disregarding the provisions stipulated in Clause 10 of the Lease Agreement.
10. The said clause explicitly mandates either party intending to terminate the lease to issue the other party with a written notice of three months or alternatively to compensate the other party with an amount equivalent to three months' rent in lieu of notice.
11. Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* requires a Landlord to give a tenant a notice in the prescribed form before altering or amending the terms of a controlled tenancy.
12. According to the Tenant, the Landlord has neither issued any such notice to it nor obtained eviction orders from this Honorable Tribunal.
13. Furthermore, contrary to the law and the provisions of the lease agreement, the Landlord granted a third-party access to the premises who commenced operations of a car wash on the section of the leased premises where the Tenant used to operate its car wash.
14. As at 1st July 2023, the Tenant had been exclusively utilizing a compact/small office space, originally designated as the operations office during its tenure as a car wash facility. The Landlord, in contravention of lawful practices, deliberately and wrongfully disconnected the electricity supply to the said office, despite the Tenant's payment of electricity tokens.
15. This unlawful course of action by the Respondent has been extremely prejudicial to the Tenant given that it has resulted into significant disruptions to the Tenant's business operations to the point that the Tenant was no longer operating its car wash. The latent consequence of the cessation of the Tenant's business operations is that tens of people who worked in the said business establishment have unfortunately been rendered jobless during the current harsh economic times which is unfair and unjust.
16. Additionally, the Tenant pleads that it was forced to default on an unsecured loan of Kshs.600,000.00 which it had obtained from the Bank on the strength of the average income of Kshs.793,740.00 which its car wash was generating per month. The Tenant states that it has provided evidence of this unsecured loan taken in its documents filed before this Tribunal.
17. The consequence is that the Tenant was no longer deriving any income from its car wash. Courtesy of a status quo order issued by this Tribunal following a site visit by the Tribunal's representatives, the



Tenant has been relegated to occupying a small office it had set up as its operational base within the leased premises.

18. Whereas the Tenant was in rent arrears for 3 months, namely, April, May and June 2023, the 10 days' notice came after the Landlord had unlawfully disconnected the water supply to the Tenant's car wash on 20th June 2023 hence paralyzing the Tenant's business completely. The Tenant has not operated his car wash since 20th June 2023 to date.
19. On 19th July 2023, this Tribunal issued Status Quo orders. In clear defiance of the aforementioned orders, the Landlord is accused of engaging in a series of flagrant attempts to evict the Tenant forcibly and unlawfully as follows:
 - a. On the very day the Orders were issued, that is, the 19th July 2023, the Landlord, in direct contravention of the Status Quo orders, approached Mr.Kondola, the representative of the Tenant to exert pressure upon the Tenant to vacate the premises;
 - b. On the subsequent day, the 20th of July 2023, while the Tenant's representative, Mr. Kondola, was present at the Leasehold Premises. the Landlord resorted to enlisting the services of the AP Police Officers to coerce the Tenant into relinquishing possession of the premises;
 - c. On the eve of the Inspection of the premises pursuant to an order of this Tribunal, the Landlord sent two individuals, with the aim of unlawfully entering the Tenant's office located on the premises. The objective was to tamper with the locks and lock the Tenant out of the premises;
 - d. The Landlord further disconnected the supply of electricity to the Tenant's office under the pretext of non-payment of electricity charges. However, the Tenant had already settled the requisite charges and procured electricity tokens in advance.
20. The Tenant therefore prays for Judgement against the Landlord for;
 - a. An order that since the Landlord/Tenant relationship appears to have been irretrievably broken down and a third party is already running a car wash on the space where the Tenant used to operate its business, the Tenant's 3 months' rent arrears amounting to Kshs 940,000.00 should be offset against the 3 months' rent deposit of a similar amount being held by the Landlord.
 - b. Payment of Kshs 940,000.00 by the Landlord to the Tenant being the equivalent of 3 months' rent for failing to issue the Tenant with 3 months' notice before terminating the lease agreement as mandated under Clause 10 of the agreement.
 - c. Refund to the Tenant by the Landlord, a sum of Kshs 500,000.00 being the amount paid to the Landlord by the Tenant as goodwill at the inception of the tenancy relationship.
 - d. Refund to the Tenant by the Landlord, a sum of Kshs 805,000.00 being the total cost paid for the Terrazo tiles by the Tenant which was supposed to be at the Landlord's cost.
 - e. Payment to the Tenant by the Landlord, loss of revenue in the sum of Kshs. 793,740.00 per month from July 2023 until the date of judgement of this Tribunal as per the evidence provided by the Tenant or in the sum which the Tribunal will determine in its discretion.
 - f. Payment to the Tenant by the Landlord, a sum of Kshs.600,000.00 which the Tenant had secured from his bank as an unsecured loan on the strength of the average income of Kshs 793,740.00 which the Tenant has defaulted in repaying due to the Respondent's actions.



21. In its defense and counter-claim, the Landlord/Respondent denies each and every allegation contained in the reference. The Respondent however admits the contents of paragraph 4 of the reference save that clause 10.2 provides that “in the course of the tenancy, where either party has been in the event of breach of covenant, terms and conditions, in the absence of the said (3) months’ notice, the party terminating the lease shall be liable to pay equivalent of three (3) months’ rent in lieu of notice.”
22. The Respondent denies the averments in paragraph 5, in particular, that it was paid goodwill of Kshs 500,000.00. It further denies that there was ever a verbal agreement that the goodwill was to be refunded to the Tenant reiterating that no such arrangement ever existed.
23. The Landlord pleads that even if goodwill was paid to the landlord, the Landlord denies that there was an agreement that the said goodwill shall be refunded to the tenant either by a new tenant or the Landlord.
24. The Landlord/Respondent further denies that the Tenant utilized kshs 3,000,000/= in renovating the suit premises. According to the Landlord, the sum of Kshs. 805,000/= paid to the Landlord was for the purchase of a climbing ladder, a washing machine, terrazzo and terrazzo tiles. The Respondent continues to be in possession of the said items i.e. the climbing ladder, the washing machine. The said items were purchased in a one-off payment. The Tenant cannot then claim for a refund of the same.
25. The Landlord denies that the Tenant was not given 3 months’ notice to vacate the premises stating that the Tenant was first issued with a notice to terminate the tenancy on 29th March 2023 by way of a letter which the Tenant acknowledged receipt of and sent a response. The Landlord further avers that failure by the Tenant to meet its contractual obligations of payment of rent as per clause 3 of the lease agreement entitled the Landlord to terminate the lease agreement.
26. The Landlord avers that his action of issuing a letter on 1st June 2023 was a follow up of the notice earlier issued on 29th March 2023. which was sufficient notice in conformity with Section 4(2) of the Landlord and Tenant (Shops, Hotels and Catering Establishment’s) Act.
27. The Landlord avers that in response to paragraph 14 of the reference, the Tenant entered into the lease agreement for a coffee shop and as per the inspection report dated 21st July 2023, the Tenant continues to occupy a sizeable space of the premises.
28. The Respondent further avers that the Tenant is in breach of the lease agreement and has caused it to undergo huge financial losses as follows;
 - a. Failure to pay rent for the coffee shop and car wash for the months of April, May and June 2023.
 - b. Failure to pay rent for the coffee shop for the months of April, May, June, July, August, September, October, November, December 2023 and January 2024 at 74,000/= per month.
 - c. Failure to pay for utilities for the aforementioned premises from April 2023-January 2024.
29. By reason of the aforesaid matters, the Respondent avers that it incurred losses of Kshs 2,166,000.00 against the Tenant made up as follows; -
 - a. Rent payable for the coffee shop and Car Wash for the months of April 2023-May 2023 Kshs 957,000/=
 - b. Interest on delayed payment between February 2023-June 2023 Kshs 159,500.
 - c. Utilities for April 2023 to January 2024 Kshs 309,500/=.



- d. Rent payable for coffee shop for April 2023-January 2024 Kshs. 740,000/-
30. The Tenant filed a response to the Landlord's counter-claim denying all the allegations set out therein and seeking that the same be dismissed with costs.
 31. The Respondent filed a witness statement by one Milka Muthoni who is the Property Manager of the suit property which the Tenant agreed to lease for a period of 5 years 3 months. The Tenant was to make rent payment quarterly in the sum of Kshs. 825,000/= to be escalated Bi-annually by 10%.
 32. Clause 10.2 stipulates that, unless in case of breach of covenant, terms and conditions therein provided, in the absence of the said Three (3) months' notice, the party so terminating shall be liable to pay the equivalent of Three (3) months in lieu of notice.
 33. The Landlord contends that the Tenant has on several occasions failed to pay rent and has gone further to issue to it cheques, knowing very well that the account lacked funds. Once the said cheques were presented to the bank, they were returned unpaid, causing the Landlord further liability and embarrassment.
 34. The Tenant is accused of constantly failing to meet its obligations under the lease Agreement under Clause 2.1 and failing to pay rent for the months of April, May and June totaling to kshs. 957,000/= despite being issued with several requests and notices ahead of time. The Tenant occupies a substantial space at the Respondent's premises as per the inspection report. The Tenant also continues to use the Respondent's utilities for which the Respondent is paying for and at the time of filing this suit, the cost amounted to Kshs 309, 500/=.
 35. On the issue of goodwill, the Respondent's witness contends that no goodwill was received from the Tenant and that goodwill is generally an intangible and assumed asset or right that assists in generating sales revenue in a business. As value can be placed on goodwill as a proprietary interest, goodwill once paid for and acquired is 'property'. In these respects, therefore, the Respondent states that the amount paid cannot be refunded since the proprietary interest in the form of goodwill has been utilized or assigned upon receipt of the payment to the Respondent.
 36. The witness avers that upon the Tenant entering into the suit premises, a deposit of Kshs.940,500 being quarterly rent was paid. The same was to be retained by the Landlord as security for the due performance of the Tenant's obligations under the lease. The deposit is refundable without interest to the Tenant after expiry of the lease and delivery up of the premises in proper condition and in accordance with the covenant of the lease.
 37. According to the Landlord, the Tenant's demand for a refund of the deposit is pegged on condition that the premises are put back to the same condition which the Tenant found it.
 38. The Landlord's witness states that the Tenant's claim for refund of Kshs 405,000/= for terrazzo tiles, climbing lane, big washing machine which are in its custody. The Landlord does not wish to retain the said terrazzo tiles and the tenant can remove the same and leave with them on its way out of the premises. The said terrazzo tiles have diminished the value of the premises from the rest of the mall and cannot be said to be improvements.
 39. The Applicant further makes a claim for loss of business stating that it was earning Kshs. 793,740/= which claim is opposed on the following grounds: -



- a. The Applicant has constantly failed to pay rent for long period of times. It is therefore ludicrous that the Applicant can claim to be earning KSh. 793,740/= yet it has been unable to make rent payment either on time or at all.
 - b. The Applicant issued cheques which were dishonored on account of insufficient funds in its account.
 - c. The Applicant continues to utilize the suit premises entertaining various visitors while he does not pay a single shilling towards the utilities such as parking, security and water.
40. The matter proceeded by way of viva voce evidence and one Daljit Singh Kondola testified on behalf of the Tenant while Milka Muthoni testified on behalf of the Landlord. Parties were thereafter directed to file their respective submissions but only the Tenant's Counsel complied.
41. Based on the pleadings and evidence adduced in this matter, we are required to determine the following issues;
- a. Whether the Tenant is entitled to the reliefs sought in the further amended reference dated 19th January 2024.
 - b. Whether the Landlord is entitled to the reliefs sought in the statement of defense and counter-claim dated 26th January 2024.
 - c. Who is liable to pay costs of the reference?
42. There is no dispute that the parties herein entered into a lease agreement in respect of the suit premises for a period of 5 years 3 months which has a termination clause for reasons other than for breach of contract making it a controlled tenancy under Section 2(1) of Cap. 301, Laws of Kenya. The said provision defines a controlled tenancy to mean;
- “a tenancy of a shop, hotel or catering establishment—
- (a) which has not been reduced into writing; or
 - (b) which has been reduced into writing and which—
 - (i) is for a period not exceeding five years; or
 - (ii) contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
 - (iii) relates to premises of a class specified under subsection (2) of this section:

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;”
43. Clause 10.1 of the lease agreement allows either party who desires to terminate it to give the other party three (3) months' written notice. In absence of the said three (3) months' notice, the party terminating the tenancy is required to pay the equivalent of three (3) months rent in lieu of notice under Clause 10.2.



44. The said lease agreement is admitted by both parties in all the filed pleadings, affidavits and witnesses' statements. There is no dispute that the Landlord did not serve the three (3) months' notice upon the Tenant before terminating the tenancy.
45. According to the Tenant, as part of its obligations, a three-months' deposit amounting to Kshs. 940,000.00 was paid along with an additional goodwill payment of Kshs. 500,000.00. The Tenant's witness emphasized in his recorded statement and in court that he had a verbal understanding with the Landlord's representative and himself at the time of paying the goodwill that since he was going to be the first tenant to operate a car wash on the premises, the goodwill paid would be refundable at the time of the Tenant's exit from the premises. He further stated that it was the parties' understanding that the said goodwill would be obtained from the incoming tenant once the tenant herein exits the premises. However, since the Tenant is being pushed out against its wish and prior to the expiry of the lease and/or lawful termination of the lease in accordance with the lease agreement, the goodwill is now recoverable from the Landlord.
46. The Tenant's witness testified that subsequent to taking possession of the premises, the Applicant invested Kshs. 3,000,000.00 in substantial improvements to the premises. Part of this money comprised of Kshs. 405,000.00 which the Tenant paid to the Landlord for the terrazzo tiles used in the premises whereas this cost was ideally supposed to be the Landlord's cost since the terrazzo tiles form part of the permanent fixtures on the premises which belong to the Landlord. This money is legally refundable to the Tenant.
47. On 1st July, the Landlord/Respondent issued the Tenant/Applicant a letter dated 1st July 2023, terminating the lease. The letter further demanded eviction of the Tenant from the premises within 24 hours disregarding the provisions stipulated in Clause 10 of the Lease Agreement.
48. The said Clause explicitly mandates either party intending to terminate the lease to issue the other party a written notice of three months or alternatively, compensate the other party with an amount equivalent to three months' rent in lieu of notice.
49. Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* requires a Landlord to give a Tenant a notice in the prescribed form before altering or amending the terms of a controlled tenancy.
50. The Landlord has neither issued such notice to the Tenant/Applicant nor obtained eviction orders from this Tribunal.
51. Furthermore, contrary to the law and the provisions of the lease agreement, the Landlord granted a third-party access to the premises who commenced operation of a car wash on the section of the leased premises where the Tenant used to operate its car wash.
52. According to the Tenant, this unlawful course of action by the Respondent was extremely prejudicial to it given that it resulted in significant disruption of the its business operations to the point that the Tenant was no longer operating its car wash. The latent consequence of the cessation of the Tenant's business operations is that tens of people who worked in the said business establishment were unfortunately rendered jobless during the current harsh economic times which is unfair and unjust.
53. Additionally, the Tenant contends that it has also been forced to default on an unsecured loan of Kshs.600,000.00 which it had obtained from the Bank on the strength of the average income of Kshs.793,740.00 which the Tenant's car wash was generating per month. The evidence of the unsecured loan taken is to be found in the Tenant's documents filed before this Tribunal.



54. The consequence of this is that the Tenant is no longer deriving any income from its car wash. Courtesy of a status quo order issued by this Tribunal following a site visit by the Tribunal's representatives, the Tenant has been relegated to simply occupying a small office it had set up as its operational base within the leased premises.
55. Whereas the Tenant was in rent arrears of 3 months namely, April, May and June 2023 when the Landlord issued it with the illegal 24-hour notice to vacate the premises, the Landlord was legally and contractually obligated to give the tenant 3 months' notice to vacate the premises which it failed to do hence violating the provisions of Clause 10 of the lease agreement. The notice came 10 days after the Landlord had unlawfully disconnected the water supply to the Tenant's car wash on 20th June 2023 hence paralyzing the Tenant's business completely. The Tenant has not operated his car wash since 20th June 2023 to date.
56. The Tenant denied operating a coffee shop in the premises and stated that the space currently in its occupation was being used as an office for the car wash. The Tenant stated that there was no separate lease for the office space. There was no demand for alleged rent arrears for the shop. As regards the alleged outstanding utilities bill of Kshs 309,500/=, the Tenant's witness stated that the initial demand was for Kshs 49,430/=. There was no electricity connected to the office despite the court order. The Tenant's witness stated that he used to operate on a token meter and that he used to pay the bills.
57. On its part, the Landlord contended that the Tenant had on several occasions failed to pay rent and had gone further to issue to it cheques knowing very well that the account lacked funds. Once the said cheques were presented to the bank, they were returned unpaid, causing the Landlord further liability and embarrassment.
58. The Tenant is accused of constantly failing to meet its obligations under the lease Agreement under Clause 2.1 and failing to pay rent for the months of April, May and June totaling to kshs. 957,000/= despite being issued with several requests and notices ahead of time. The Tenant occupied a substantial space at the Respondent's premises as per the inspection report. The Tenant also continued to utilize the Respondent's utilities for which the Respondent is paying for which at the time of filing this suit amounted to Kshs 309, 500/=.
59. On the issue of goodwill, the Respondent's witness contended that no goodwill was received from the Tenant and that goodwill is generally an intangible and assumed asset or right that assists in generating sales revenue in a business. As value can be placed on goodwill as a proprietary interest, goodwill once paid for and acquired is 'property'. In these respects, therefore, the Respondent stated that the amount paid cannot be refunded since the proprietary interest in the form of goodwill has been utilized or assigned upon receipt of the payment to the Respondent.
60. The witness avers that once the Tenant entered into the said suit premises, a deposit of Kshs.940,500 being quarterly rent was paid. The same was to be retained by the Landlord as security for the due performance of the Tenant's obligations under the lease. The deposit is refundable without interest to the Tenant after expiry of the lease and delivery up of the premises in proper condition and in accordance with the covenant of the lease.
61. According to the Landlord, the Tenant's demand for a refund of the deposit is pegged on condition that the premises are put back to the same condition which the Tenant found it.
62. The Landlord's witness denied that the Tenant's was entitled for refund of Kshs. 805,000/= for terrazzo tiles, climbing lane, big washing machine which are in its custody. The Landlord stated that it does not wish to retain the said terrazzo tiles and the Tenant can remove the same and leave with them



- on its way out of the premises. The said terrazzo tiles have diminished the value of the premises from the rest of the mall and cannot be said to be improvements.
63. The Applicant further makes a claim for loss of business, stating that it was earning Kshs. 793,740/= per month which claim is opposed by the Landlord on the following grounds: -
- a. The Applicant has constantly failed to pay rent for long periods of time. It is therefore ludicrous that the Applicant can claim to be earning Kshs. 793,740/= yet it has been unable to make rent payment either on time or at all.
 - b. The Applicant issued cheques which were dishonored on account of insufficient funds in its account.
 - c. The Applicant continues to utilize the suit premises entertaining various visitors while he does not pay a single shilling towards the utilities such as parking, security and water.
64. In her evidence before this Tribunal, the Landlord's witness stated that the Tenant has been in occupation of the coffee shop without paying for security, parking and other facilities in the business mall. These were part of the rent. Utilities were water and generator electricity charges. Electricity to the shop was however disconnected. The Landlord therefore claim rent against the Tenant for the coffee shop which he occupies without pay.
65. The Landlord's witness testified that she was not aware of goodwill as it was not reduced into writing neither was she aware of the unsecured loan given by the bank to the Tenant. She stated that the Tenant was to return the premises to the original condition it was as per the lease agreement. In cross examination, the witness stated that discussions on goodwill and fixing of terrazzo tiles were done directly between the Tenant and one Charles Nyabuti Ondieki who is a director of the Landlord and only the latter could confirm the same.
66. The witness confirmed that the only utilities payable by the Tenant was generator electricity and water. She confirmed that water was disconnected on 20th June 2022 to the Tenant's premises. The new Tenant took over on 5th July 2023. The water was not reconnected until the new Tenant took over the premises.
67. Although the Landlord's witness claimed that the Tenant had a coffee machine in the premises which was moved out, there was no evidence exhibited of the alleged gate pass for the same neither was there any rent invoice for the coffee shop separate from that of the car wash. It was admitted by the witness that the Tenant herein was the first one to operate a car wash in the suit premises.
68. The Landlord's witness admitted that the Ten (10) days' notice stipulated in the lease agreement was not issued. There was neither a three (3) months' notice issued to the tenant on account of breach of covenant to pay rent. Equally, there was no joint inspection carried out to ascertain the condition of the suit premises before the new tenant took possession.
69. Having listened to both parties and after perusing the documents filed in the matter, it is clear to us that the termination of the Tenant's tenancy was executed without any regard to the lease agreement or the provisions of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap. 301, Laws of Kenya. The notices stipulated under the lease agreement and the said statute were not issued.
70. Section 4(2) of Cap. 301, stipulates as follows;
- “(2) 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.”

71. The Tenant is seeking to recover goodwill and the cost of improvements effected on the suit premises by it, Section 12(1)(L) of Cap. 301, gives this Tribunal power to award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill and improvements carried out by the tenant with the landlord’s consent.
72. The Landlord’s witness stated in cross examination that she was not privy to the discussions which took place between the Tenant’s witness and one Charles Nyabuti Ondieki who is a director of the Landlord. There is no reason to doubt that the Tenant paid a sum of Kshs 500,000/= for goodwill which has not been refunded to it after the takeover of its business by a third party who was brought in by the Landlord after the illegal termination of the lease. The said amount is refundable to the Tenant.
73. There is no dispute that the Tenant effected improvements on the suit premises by affixing terrazzo tiles thereon which improvements are now part and parcel of the car wash leased out to the new tenant. The cost thereof which was clarified at the hearing to be in the sum of kshs 405,000/= is refundable to it as removing the same will be of no use to the Tenant who has been illegally evicted from the suit premises.
74. The Tenant claims Kshs 940,000/= being refund of three (3) months’ rent deposit as security which it seeks to be defrayed against the rent arrears for the three (3) months prior to the illegal termination of its tenancy. The amount having been deposited with the Landlord to act as rent security for the suit premises shall be offset against the said rent arrears.
75. The Tenant has also sought to recover three (3) months’ rent in lieu of notice in line with Clause 10.2 of the lease agreement. The Landlord’s witness admitted that no proper notice was given in accordance with the lease agreement and it is therefore clear that the Tenant is entitled to a sum of Kshs 940,000/= as stipulated in the said lease agreement.
76. As regards the claim for loss of business, there are no audited accounts tendered by the Tenant in evidence to enable this Tribunal to award the same. The bank statements cannot suffice to prove such a claim and the same is therefore rejected. Equally, the claim by the Tenant for a sum of Kshs 600,000/= in respect of alleged unsecured bank loan which it allegedly obtained on the strength of the average income from the car wash business is equally unproved and is in any event too remote to be claimed against the Landlord. The same is rejected.
77. As regards the Landlord’s claim under the counter-claim, we find that although the Tenant fell into three (3) months’ arrears, the Landlord was high-handed in dealing with the situation without following the stipulations in the lease agreement and the provisions of Cap. 301, the Landlord cannot be rewarded for its transgressions against the Tenant.
78. The claim for alleged rent arrears for the coffee shop does not arise as the same did not have a separate lease from the car wash and was meant to serve the latter. Having taken over the car wash illegally, the Landlord cannot now claim rent from the Tenant on the basis of the illegal state of affairs. The Landlord having failed to comply with this Tribunal’s orders issued to protect the Tenant cannot now seek to be rewarded by turning the case against the latter. We do not find any basis for awarding any of its claim except what was admitted by the Tenant to have been owing prior to the introduction of the illegal state of affairs subject matter of this reference.
79. As regards costs, the same are at our discretion under Section 12(1)(k) of Cap. 301, Laws of Kenya but always follow the event unless for good reasons otherwise ordered. We shall award exemplary costs against the Landlord on account of creating an illegal state of affairs in regard to the protected tenancy



and continuing to defy orders of this Tribunal to the chagrin of the Tenant. In that regard, we shall quantify the costs at Kshs 300,000/=.

80. In conclusion the following final orders commend to us under Section 12(4) of Cap. 301, Laws of Kenya;
- a. The Tenant's further amended reference dated 19th January 2024 is allowed in the following terms;
 - i. Kshs 940,000.00 being the rent deposit paid to the Landlord shall be offset against the three (3) months' admitted rent arrears.
 - ii. Kshs 940,000.00 being three (3) months' rent in lieu of notice as stipulated under Clause 10 of the lease agreement.
 - iii. Kshs 500,000.00 being the amount paid to the Landlord as goodwill at inception of the tenancy relationship.
 - iv. Kshs 405,000.00 being the cost of terrazzo tiles improvement paid by the Tenant to the Landlord.
 - v. Kshs 300,000.00 being exemplary costs of the reference.
 - b. The Landlord's counter-claim is dismissed save for the three (3) months' rent arrears admitted by the Tenant which shall be offset against the rent deposit as ordered above.
 - c. The Tenant shall vacate the suit premises immediately upon payment of the above stated amounts by the Landlord.

It is so ordered.

DATED, SIGNED & VIRTUALLY DELIVERED THIS 3RD DAY OF MAY 2024

HON. GAKUHI CHEGE- PANEL CHAIRPERSON

HON. JOYCE OSODO- PANEL MEMBER

In the presence of:

Wandati for tenant

Wambiliangah for Landlord

