



Munyao v Kimeu (Tribunal Case E582 of 2023)
[2023] KEBPRT 621 (KLR) (Civ) (14 September 2023) (Ruling)

Neutral citation: [2023] KEBPRT 621 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E582 OF 2023
A MUMA, AG. CHAIR
SEPTEMBER 14, 2023

BETWEEN

OBED MUNYAO APPLICANT

AND

DANCAN KIMEU RESPONDENT

RULING

A. Parties and Representatives

1. The applicant Obed Munyao is the tenant and rented space for the business in the suit property (hereinafter known as the 'Tenant').
2. The Tenant is appearing in person.
3. The Respondent Dancan Kimeu is the is the Landlord and rented out space to the tenant for the business in the suit property (Hereinafter known as the 'Landlord')
4. The Landlord is appearing in person.

B. The Dispute Background

5. The tenant moved this tribunal by way of reference dated 8th June 2023 and a Notice of Motion application of even date. The tenant sought among others, orders to restrain the Landlord from unlawfully intercepting/harassing, intimidating and/or closing, evicting and increasing monthly rent from Kshs. 5,000.00 to KShs. 6,000.00.
6. The Tenant filed a reference and Notice of Motion Application dated 8th June 2023 and was granted injunctory orders



7. Vide an Order of this Tribunal issued on 12th June 2023, this honourable Court restrained the Landlord and/or his agent from unlawfully intercepting/harassing, intimidating and/or closing, evicting and increasing monthly rent from KShs. 5,000.00 to KSh 6000.00
8. The Tribunal restrained the Landlord from disconnecting electricity power, water supply and interfering with the tenant's quiet possession.
9. The Landlord filed a Response dated 17th July 2023.

C. Tenant's Case

10. The Tenant deponed that he has been in occupation of the suit premises and diligently paying monthly rent of KShs. 5,000.00 from 15th February 2020.
11. It is his case that in order to avoid accumulation of rent arrears, he resorted to be paying rent of KShs. 6,000.00 instead of KShs. 5,000.00. That as a result of excessive payment, the Landlord has his money in the tune of KShs. 11,000.00.
12. He deponed that he is currently in rent arrears of KShs. 10,000.00.
13. He further deposed that the Landlord has inconvenienced, damaged his reputation, disfranchised his Client and caused emotional psychological suffering.
14. The Tenant further averred that he has done repairs and renovation at an estimated cost of KShs. 33,000.00.

D. Landlord's Case

15. The Landlord deponed that upon execution of the subject tenancy agreement, they agreed that monthly rent shall be KShs. 5,000.00 which rent amount would escalate by KShs.1000.00 to KShs. 6,000.00 after a period of 12 months.
16. He also deponed that he had not granted permission to the Tenant to undertake renovations and repairs.
17. He stated that among other reasons, he wanted the tenant to vacate on the grounds of delays in rent payment and his unfriendliness.

E. Jurisdiction

18. There is no dispute as to the jurisdiction of this court.

F. Issues for Determination

19. I have carefully perused all the pleadings and evidence presented before this honourable Court by the parties. It is therefore my respectful finding that the two issues that fall for determination by this Tribunal are whether the tenant is in rent arrears and whether the Landlord actions to evict the tenant are lawful.

G. Analysis And Findings

20. The issue of whether proclamation and the intended attachment of the Tenant's movable property is valid shall be dispense with in two limbs as follows: whether the tenant is in rent arrears; and whether the Landlord can proclaim tenant's movable property without the order of this Tribunal.



a. Whether the tenant is in rent arrears

21. Both parties in their case admit having entered into a valid tenancy agreement, that the monthly rent payment a per the said agreement was KShs. 5,000.00.
22. The tenant in his Supporting affidavit sworn by himself stated that he had diligently been paying for his monthly rent payment of KShs. 5,000.00 until sometimes in 2021 when he started paying monthly rent in the tune of KShs. 6,000.00.
23. He further states in his Affidavit that the reason for excess payment of KShs. 1,000.00 on his rent payable was to cure possibility of accumulating rent arrears.
24. The tenant further states that as a result of payment of rent in excess, he has accumulated a total of KShs. 1,000.00 which is being held by the Landlord.
25. He admitted to be in rent arrears of KShs. 10,000.00. However, he stated that the said rent arrears should be set off by his KShs. 11,000.00 being held by the Landlord as a result of excess payment of rent. Thus, he denies allegations that he owes the Landlord any sum of money in terms of rent arrears.
26. Further, the tenant has issued a Mpesa statement showing proof of his payment of the rent to the landlord.
27. On the other hand, the Landlord contends that the Tenant is in rent arrears. I however not that the Landlord did not indicate exact of amount of rent owed to him by the tenant.
28. While dispensing with this issue, I find it prudent to consider the fact that there existed a rent payment agreement otherwise called tenancy agreement for the purpose of relationship of the parties herein.
29. As per the said agreement, both parties admitted that the monthly rent payable for the suit premises was KShs. 5,000.00. I note that the Landlord has not demonstrated anywhere that the tenant failed in remit his monthly rent in the said sum of money.
30. I however note that allegations by the Landlord that the tenant is in arrears are premised on his intentions to increase rent from KShs.5,000.00 to KShs. 6,000.00. In the same vein, I note that there was no Order by this honourable Tribunal allowing variation of the rent in the suit premises.
31. It is now trite law and judicially settled that, while Landlords are at liberty to increase rent payable in their premises, they can only exercise that right upon activation or approval by this honourable Tribunal. In lieu of this Tribunal's Order, those attempts or actions are faulted. As such, the Landlord cannot claim rent arrears resulted from unlawful increase of rent in the premises.
32. In view of the foregoing, I find that the tenant is not in any rent arrears.

Whether the Landlord's actions to evict the tenant are lawful

33. *Landlords & Tenant (Shop, Hotel and Catering Establishment) Act* provides for the manner in which tenancy agreement can be terminated and how rent payable for a premise can be varied by the Landlord. Section 4 provides:

4. Termination of, and alteration of terms and conditions in, controlled tenancy

- (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.



(3) A tenant who wishes to obtain a reassessment of the rent of a controlled tenancy or the alteration of any term or condition in, or of any right or service enjoyed by him under, such a tenancy, shall give notice in that behalf to the landlord in the prescribed form.

(4) No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, as shall be specified therein:

Provided that—

(i) where notice is given of the termination of a controlled tenancy, the date of termination shall not be earlier than the earliest date on which, but for the provisions of this Act, the tenancy would have, or could have been, terminated;

(ii) where the terms and conditions of a controlled tenancy provide for a period of notice exceeding two months, that period shall be substituted for the said period of two months after the receipt of the tenancy notice;

(iii) the parties to the tenancy may agree in writing to any lesser period of notice.

34. Landlords are usually the owners of the premises. They have liberty to use or rent out their premises in a manner they deem fit or to a person they choose. As canvassed above, Landlord are under law allowed to effect rent variation but only upon following due procedure. However, while doing these, the Landlord are expected to be extremely cautious not to stand in the brims of law. Their illegal actions or conducts shall not be validated in law notwithstanding them being done in their own premises.

35. The Landlord in his response states that the tenant is a ‘difficult tenant’. He further describes him as extremely unfriendly. While seeking to validate his eviction plans, he cites frustration by the tenant with respect to unjustifiable delays in rent payment.

36. In the instant case before me, I note the frustration of the Landlord that almost defined their tenancy relationship as estranged. On the other end, the tenant maintains that he has been diligent in executing his tenancy obligation.

37. While I underscore the Landlord’s reserved right to evict a tenant, I do not find it proper that the same right be illegally exercised in a manner to frustrate a decent living tenancy relationship. This however does not rip of the Landlord his right to evict or distress, my emphasis is that the same requires to be properly undertaken. Accordingly, I fault the attempts and actions by the Landlord to evict the Tenant herein since the same were being done without authorization of this Tribunal.

38. Having made the above findings, I now turn to the prayers made by each party in these proceedings and make the following orders in the upshot.

H. Orders

39. In the upshot:

- a. The Tenant’s Reference dated 8th June 2022 and the Notice of Application of even date are allowed in the following terms;



- b. The tenant shall remain in the premises and keep paying rent as and when it falls due at the agreed rate of Kshs. 6,000.00 per month from 5th October 2023, and thereafter every subsequent month on or before the 5th.
- c. The Landlord shall be at liberty to issue a proper notice to terminate the tenancy if he so wishes with good reasons.
- d. Each party to bear their own costs.

HON A. MUMA

AG. CHAIR/MEMBER

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Ruling dated, signed and delivered virtually by Hon. Muma this 14th day of September 2023 in presence of Obed Munyao the tenant in person and Duncan Kimeu the Landlord in person.

HON. A MUMA

Ag. Chair/Member

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