



**Mukira v Kamau & 2 others (Tribunal Case E723 of 2023)
[2023] KEBPRT 1234 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1234 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E723 OF 2023
M MAKORI, MEMBER
SEPTEMBER 21, 2023**

BETWEEN

JOSEPH GITONGA MUKIRA APPLICANT

AND

RICAHRD KIMATU KAMAU 1ST RESPONDENT

MWANZO MANAGEMENT LIMITED 2ND RESPONDENT

NJUGUNA KAMAU 3RD RESPONDENT

RULING

1. The Applicant filed an application dated 25/7/2023 where the applicant sought orders for re-opening of the premises they occupied prior to the lock up of the premises done on 19/5/2023.
2. In the first instance and on 31/7/2023 the Honourable Court granted prayers 1 and 2 of the said application and slated that the matter was to be heard on 22/8/2023.
3. That the Respondents filed an application dated 8/8/2023 seeking stay of execution of the orders issued on 31/7/2023 and where the Tenant was to pay Kshs 14,000.00 and the application was slated for hearing on 4/9/2023.
4. In the course of event and after filing the present matter, the Tenant was evicted from the said premises and before matter was conclusively determined.
5. I have considered the application and the affidavits on record. I have also taken into account the narration in the applicant's submissions.
6. The Respondent had been properly directed by orders issued on the 31/7/2023 to re-open and allow the tenant to continue with his business as before.



7. The only issue that begs for determination by this tribunal is what is the appropriate relief to grant in the circumstances?
8. In addressing the above underscored issues, the Court wishes to re-state the mandate it has in determining the disputes brought before it pursuant to the provisions of section 12 (1) of the *Landlords & Tenants (Shops, Hotel & Catering Establishments Act*, Cap 301 Laws of Kenya) that; -
 1. A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this *Act*, and in addition to and without prejudice to the generality of the foregoing shall have power—
 - a. to determine whether or not any tenancy is a controlled tenancy;
 - b. to determine or vary the rent to be payable in respect of any controlled tenancy, having regard to all the circumstances thereof;
 - c. to apportion the payment of rent payable under a controlled tenancy among tenants sharing the occupation of the premises comprised in the controlled tenancy;
 - d. where the rent chargeable in respect of any controlled tenancy includes a payment by way of service charge, to fix the amount of such service charge;
 - e. to make orders, upon such terms and conditions as it thinks fit, for the recovery of possession and for the payment of arrears of rent and mesne profits, which orders may be applicable to any person, whether or not he is a tenant, being at any material time in occupation of the premises comprised in a controlled tenancy;
 - f. for the purpose of enabling additional buildings to be erected, to make orders permitting landlords to excise vacant land out of premises of which, but for the provisions of this Act, the landlord could have recovered possession;
 - g. where the landlord fails to carry out any repairs for which he is liable—
 - i. to have the required repairs carried out at the cost of the landlord and, if the landlord fails to pay the cost of such repairs, to recover the cost thereof by requiring the tenant;
 - ii. to pay rent to the Tribunal for such period as may be required to defray the cost of such repairs, and so that the receipt of the Tribunal shall be a good discharge for any rent so paid;
 - iii. to authorize the tenant to carry out the required repairs, and to deduct the cost of such repairs from the rent payable to the landlord;
 - h. to permit the levy of distress for rent;
 - i. to vary or rescind any order made by the Tribunal under the provisions of this Act;
 - j. to administer oaths and order discovery and production of documents in like manner as in civil proceedings before the High Court, to require any landlord or tenant to disclose any information or evidence which the Tribunal considers relevant regarding rents and terms or conditions of tenancies, and to issue summons for the attendance of witnesses to give evidence or produce documents, or both, before the award costs in respect of references made to it, which costs may be exemplary costs where the Tribunal is satisfied that a reference to it is frivolous or vexatious;



- k. 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;
 - l. to require a tenant or landlord to attend before the Tribunal at a time and place specified by it, and if such tenant or landlord fails to attend, the Tribunal may investigate or determine the matter before it in the absence of such tenant or landlord;
 - m. to enter and inspect premises comprised in a controlled tenancy in respect of which a reference has been made to the Tribunal.
9. It is clear that the tenant had not been given an opportunity to have his case effectively determined on teething issues affecting the tenancy relationship. The same had been terminated and thus removing the parties out of the jurisdiction of this tribunal.
10. As to whether the tenant is entitled to the reliefs claimed, I only need to cite the decision in *Aikman vs- Muchoki* (1982) eKLR at page 4/6 wherein Madan J.A (as he then was) while considering a similar matter had the following to say: -
- “Those who flout the law by infringing the rightful title of others and brazenly admit it ought to be restrained by injunction. If I am adding a new dimension for the grant of an interlocutory, injunction be it so. Equity will not assist law breakers.....I will not subscribe to the theory that a wrong doer can keep what he has taken because he can pay for it. The real injury arose from the unlawful seizure of the estates by the defendants in defiance of the law. As in the circumstances, the plaintiffs could not fail to succeed the status quo first had to be restored”
11. Based on the foregoing and considering the facts that the application was filed before the eviction and hence whereas the tenant cannot be returned to the premises he can be compensated pursuant to the provisions Section 12 (1) (l) of *Landlords & Tenants (Shops, Hotel & Catering Establishments Act*, Cap 301 Laws of Kenya).
12. I therefore grant orders for compensation to the tenant.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 21ST DAY OF SEPTEMBER 2023.

HON. MIKE MAKORI - MEMBER

In the absence of the parties

