



**Kiboi v Administrator of the Estate of the Late Joseph Njuguna Nganga & 3 others
(Tribunal Case E892 of 2023) [2024] KEBPRT 587 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 587 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E892 OF 2023
P MAY, MEMBER
MAY 16, 2024**

BETWEEN

JOHN KIBOI TENANT

AND

**THE ADMINISTRATOR OF THE ESTATE OF THE LATE JOSEPH NJUGUNA
NGANGA 1ST RESPONDENT
STEPHEN NGANGA 2ND RESPONDENT
VIRGINIA WAMBUI 3RD RESPONDENT
DAVID GITAU 4TH RESPONDENT**

RULING

1. The application before me is the tenant's notice of motion dated 6th September, 2023. The application sought for orders of temporary injunction against the respondents. The application was premised on the grounds set out in the supporting affidavit sworn by the applicant. He averred that he had been in occupation of the demised premises and that the respondents issued him with a verbal notice and have blocked him from accessing the premises.
2. The 2nd and 4th Respondents duly entered appearance and filed a brief replying affidavit denying the existence of tenancy relationship between them and the tenant. The Respondents stated that the application was frivolous, vexatious and amounted to an abuse of the process of the Tribunal and urged that the same be dismissed with costs.
3. The application was placed before the Tribunal whereby interim orders were issued in favour of the applicant. The application was set down for hearing but the same was adjourned time without number as parties gave excuses to have the matter taken out. The parties have been indolent in dispensing with the application.



4. The parties finally agreed to have the application canvassed by way of written submissions. When the Tribunal retired to draft this ruling, there were no submissions on record despite the parties having been granted sufficient time to file their respective submissions. The Tribunal has however proceeded to assess the merits of the application based on the pleadings on record.
5. The prayers sought in the application were couched in a limited manner. The orders of temporary injunction sought were to subsist only during the hearing of the application. This mistake was not rectified at any stage. The interim orders having been granted, the prayers sought became moot. The orders that were also sought in the reference dated 6/9/2023 were almost similar to those sought in the application.
6. Section 107 (1) of the Evidence Act is to the effect that:
 - (1). Whoever desires any Court to give Judgment as to any legal right dependent on the existence facts which he asserts must prove that those facts exist.
 - (2). When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
7. In the cases of Re H (minors) sexual abuse; standard of proof {1996} AC 563 and 505 for the Home Department v Rehman {2003} 1 AC 153. The House of Lords laid down a series of guiding principles on standard of proof as follows:
 - (1) Where the matters in issue are facts, the standard of proof required in non-criminal proceedings is the preponderance of probability, usually referred to as the balance of probability.
 - (2) The balance of probability standard means that the Court must be satisfied that the event in question is more likely than not to have occurred.
 - (3) The balance of probability standard is a flexible standard. This means that when assessing this probability, the Court will assume that some things are inherently more likely than others.”
8. Further in re H C minors {1996} AC 563 at 586 – Lord Nicholls explained himself as follows:

“The balance of probability standard means that a Court is satisfied an event occurred, if the Court considers, that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the Court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegations, the less likely it is that the event occurred and, hence, the stronger should be the evidence before the Court concludes that the allegation is established on the balance of probability. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation”
9. Guided by the case law and provisions of statute above, it was expected that the tenant would take the necessary steps to prove their case and lay a basis on the tenancy relationship between himself and the respondents especially after the same was denied. This has not been the case. The existence of tenancy is central in determining such disputes. It was not enough for the tenant to attach photos but it was also necessary that they shared proof of payment, licences and other documents to prove that indeed they were in occupation and deserving the protection of the Honourable Tribunal as envisaged under CAP 301. The adversarial nature of our legal system requires parties to be diligent and guide the Tribunal appropriately. It is not for the Tribunal to aid a party in salvaging their case occasioned by poor preparation.



10. In view of the foregoing, it is clear that the tenant has failed to discharge their mandate as envisaged under sections 107 and 108 of the [Evidence Act](#). If the Tribunal was to weigh the evidence tendered against the triple requirements for the grant of orders of temporary injunction as set in the locus classicus of *Giella vs Cassman Brown*, the tenant's application would still fail.

11. In the end the application and reference dated 6/9/2023 are hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF MAY, 2024.

HON. PATRICIA MAY

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Kamau for the Tenant/Applicant

No appearance by the Landlords/Respondents

