



**Kamau v Njeri & another (Tribunal Case E1315 of 2023)  
[2024] KEBPRT 535 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 535 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E1315 OF 2023  
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER  
APRIL 26, 2024**

**BETWEEN**

**JOSEPH KAMAU ..... APPLICANT**

**AND**

**NAOMI NJERI ..... 1<sup>ST</sup> RESPONDENT**

**JOYCE NYAMBURA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A. Dispute Background**

1. The tenant/applicant moved this tribunal vide a reference under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301, dated 29<sup>th</sup> December, 2023 with a Complaint that on or about 4<sup>th</sup> December, 2023, the respondents served the tenant with an illegal notice of termination of tenancy yet the tenant did not have any rent arrears, that the respondents have been harassing the tenant causing loss of clients and loss of stock (meat) worth KES. 450,000 as a result of illegal disconnection of electricity.
2. The tenant simultaneously filed a Notice of Motion under Certificate of Urgency dated 29<sup>th</sup> December, 2023 in which he sought for the following orders; -
  - a. That the application be certified urgent.
  - b. That upon hearing the application ex-parte, the tribunal issues interim orders of injunction preventing the respondents from breaking into the suit premises, evicting, locking, harassing the tenant, disconnecting water or electricity pending hearing of the application inter-partes.
  - c. That upon hearing the application ex-parte, the tribunal do issue an interim order compelling the respondents to reconnect electricity back into the suit premises.



- d. That upon hearing the application, the tribunal issues an interim order of injunction preventing the respondents from breaking into the suit premises, evicting, locking, harassing the tenant, disconnecting water or electricity pending hearing of the main suit.
  - e. That the O.C.S Kenol Police Station do ensure compliance of the said orders.
  - f. That the tribunal be pleased to declare that the Notice to Vacate by the respondents is illegal, null and void.
  - g. That the tribunal be pleased to order the respondents to compensate the applicant with sums equivalent to KES. 450,000 for the losses suffered due to illegal disconnection of electricity.
  - h. That the costs of the application be borne by the respondent.
  - i. That the tribunal grants any other order it deems fit and just in the circumstances.
3. The application is supported by an affidavit of even date in which the tenant/applicant deposes as follows; -
- i. That he has been at the premises known as Shop No. 3 and 4 Kenol next to KCB since the year 2018, running a meat and minced meat butchery together with M-Pesa shop at a monthly rent of KES. 22,000 and has dutifully been paying rent.
  - ii. That on 1<sup>st</sup> September, 2023, the 1<sup>st</sup> respondent disconnected electricity from the suit premises causing damage and losses worth KES. 450,000.
  - iii. That on 4<sup>th</sup> December, 2023, the respondents served the tenant with an illegal notice of termination of tenancy prompting the filing of the application. A copy of the said notice is annexed "JK1".
  - iv. That the tenant has no rent arrears and is willing to continue paying rent to the respondents herein as the parties still have a valid and existing landlord/tenant relationship.
  - v. That the tenant is currently servicing loans and as such is not able or ready to vacate from the suit premises.
4. On 2<sup>nd</sup> January, 2024, the tribunal issued interim orders of injunction against the respondents pending the hearing of the application inter-partes.
5. The application is opposed vide a replying affidavit dated 31<sup>st</sup> January, 2024 in which the 1<sup>st</sup> respondent deposes as follows; -
- i. That the applicant is a tenant in Shop 4 and 5 next to KCB since 2018 paying KES. 22,000 as rent per month and shop No. 3 was inadvertently stated to be operated by the applicant herein.
  - ii. That the applicant was initially running a hotel and M-Pesa shop before converting the former to a butchery.
  - iii. That the applicant has arrears for the months of October, November, December 2023 and January 2024.
  - iv. That on or about December 2023, the applicant sent KES. 15,000 via M-Pesa thus the applicant is in rent arrears amounting to KES. 73,000 up to date.



- v. That on September 2023, Kenya Power and Lighting Company Limited during their random inspections disconnected power to the suit premises after realizing that the tenant had looped his meter and thus was utilizing power for free.
  - vi. That the meter that was serving the suit premises was also being utilized by another tenant called Andrew.
  - vii. That the aforesaid Andrew pursued the matter concerning the disconnection of electricity and was informed that electricity would be connected back to his premises if the same is applied for with the blessings of the landlord.
  - viii. That the applicant cannot blame the respondents for any loss since the disconnection of electricity was occasioned by his own aforesaid illegal looping of his power meter.
  - ix. That on 4<sup>th</sup> December, 2023, the 1<sup>st</sup> respondent/landlord through his agent issued a reminder notice to the tenant to vacate the suit premises which is a follow-up to the earlier notice issued on 2<sup>nd</sup> October, 2023. A copy of the said reminder dated 4<sup>th</sup> December, 2023 is annexed as “NNM-1”.
  - x. That the notice annexed to the applicant’s supporting affidavit marked “KJ1” is not the notice that was issued by the 1<sup>st</sup> respondent or her agents and that the affixed execution against the 1<sup>st</sup> respondent’s name is not her signature.
  - xi. That the 1<sup>st</sup> respondent/landlord has never harassed the applicant herein.
  - xii. That the tribunal directs that the applicant honors payment of the rent arrears due before entertaining the matter.
6. At the court hearing of 1<sup>st</sup> February, 2024, the tribunal directed that electricity to the suit premises be reconnected by KPLC and that the application be disposed of by way of written submissions.
7. The tenant/applicant filed a further affidavit dated 14<sup>th</sup> February in which he deposes as follows; -
- i. That the tenant does not have any rent arrears and that no statement or rent book has been availed in support of the alleged rent arrears.
  - ii. That neither the notice issued by the landlady in person nor the alleged notice issued by the purported agent mentioned the alleged rent arrears as reason for termination.
  - iii. That the tenant has never received any demand notice of the alleged rent arrears or a complaint from KPLC on the alleged irregularity or interference with the meter.
  - iv. That it is the landlady who disconnected electricity and interfered with token meter No. 22170582914 in a bid to unlawfully evict the tenant.
  - v. That from the time the tenant converted the premises into a butchery and started getting a good number of customers, the landlady and her daughter got jealous and schemed to evict the tenant irregularly.
  - vi. That the tenant has paid all his rent due via M-Pesa and in cash including KES. 8,000 paid on 24<sup>th</sup> November, 2023 to the 1<sup>st</sup> respondent/landlady.
  - vii. That the tenant was never served with the alleged reminder notice.
  - viii. That the tenant has never interfered with KPLC installation and or meter as alleged.



8. The parties herein filed their respective written submissions with the tenant filing his dated 16<sup>th</sup> February, 2024 and the landlord filing his dated 3<sup>rd</sup> April, 2024. We have considered the contents of the said submissions in arriving at our findings in this matter.

## **B. Issues for determination**

9. The following are the issues for determination; -
- a. Whether the notices to terminate tenancy both dated 4<sup>th</sup> December, 2023 are valid and lawful.
  - b. Whether the tenant is entitled to the orders sought in the application dated 29<sup>th</sup> December, 2023.
  - c. Who shall bear the costs of the application?

### **Issue (a) Whether the notices to terminate tenancy dated 4<sup>th</sup> December, 2023 are valid and lawful.**

10. The tenant/applicant in his supporting affidavit dated 29<sup>th</sup> December, 2023 swore that the 1<sup>st</sup> respondent/landlord issued him with a notice to vacate the suit premises dated 4<sup>th</sup> December, 2023 which is annexed as “JK1”. He however denies ever being served with a reminder notice dated 4<sup>th</sup> December, 2023 and annexed as “NNM-1” which was allegedly a follow up of the earlier notice issued to the applicant on 2<sup>nd</sup> October, 2023. The alleged earlier notice dated 2<sup>nd</sup> October, 2023 has however not been filed in this tribunal.
11. The 1<sup>st</sup> respondent/landlord in his written submissions admits that the notices depicted vide exhibits “JK1” and or “NNM-1” are not in the prescribed form and that they are not valid termination notices.
12. We have perused both notices herein and we indeed confirm that both notices are not in the prescribed form according to Section 4 (2) of [Cap 301](#) Laws of Kenya which stipulates as follows; -
- “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.”
13. Based on the analysis above, we find that the notices to terminate tenancy both dated 4<sup>th</sup> December, 2023 and annexed as “JK1” and “NNM-1” herein are invalid and illegal.

### **Issue (b) Whether the tenant is entitled to the orders sought in the application dated 29<sup>th</sup> December, 2023.**

14. The tenant/applicant approached this tribunal seeking orders of injunction against the respondents and that the respondents compensate the applicant with the sum of KES. 450,000 for the losses suffered due to illegal disconnection of electricity.
15. The tribunal has established that the notices to terminate tenancy herein are invalid and illegal and therefore the tenant is entitled to the orders of injunction sought.
16. The tenant in his affidavits swore that it is the landlady who disconnected electricity and interfered with the installation of the token meter while the 1<sup>st</sup> respondent/landlady deposes that on or about September 2023, Kenya Power and Lighting Company Limited disconnected electricity after realizing the illegal looping of the electricity meter which was allegedly done by the tenant/applicant.



17. No evidence has been tendered to prove the allegations above, therefore the tribunal shall order that this matter proceeds to hearing on merit to establish the issue of electricity disconnection at the suit premises together with the compensation sought by the tenant/applicant with regard to the alleged losses of KES. 450,000
18. On the issue of rent arrears, the tenant in both his supporting affidavit and further affidavit dated 29<sup>th</sup> December, 2023 and 14<sup>th</sup> February, 2024 respectively has sworn that he has no rent arrears.
19. The landlord on the other hand in his replying affidavit dated 31<sup>st</sup> January, 2024 deposes that the tenant has rent arrears amounting to KES. 73,000.
20. In addition, at a court hearing on 13<sup>th</sup> March, 2024, Counsel for the landlord stated that the tenant had not paid any rent since October, 2023 and that only payment of KES. 15,000 was made in December 2023. On the same day, the tribunal issued orders that parties file and exchange rent account statements together with evidence of rent payment. Upon perusal of the court documents, no such documents have been filed by either party and thus this tribunal is unable to determine whether there are any rent arrears owing.
21. We find that lack of proof by either party with regard to rent payment and rent arrears can only be determined after hearing both parties and we shall therefore not make any orders with regard to the same at this stage.

**Issue (c ) Who shall bear the costs of the application?**

22. As regards costs, the same are in the tribunal's discretion under Section 12(1)(k) of [Cap. 301](#), but always follow the event unless for good reasons otherwise ordered. Costs of the application shall abide the outcome of the reference.

**C. Orders**

23. In conclusion, the following orders commend to us; -
  - a. The application dated 29<sup>th</sup> December, 2023 is hereby allowed in terms of prayers (d), (e ) and (f).
  - b. The other unresolved issues shall proceed to hearing by way of viva voce evidence and both parties shall comply with Order 11 of the *Civil Procedure Rules* within 30 days hereof whereupon the matter shall be mentioned to confirm compliance and fix a hearing date.
  - c. The landlords are granted leave to issue a proper notice of termination of tenancy upon the tenant in the prescribed form under Section 4(2) of [Cap. 301](#), Laws of Kenya (if they so desire).
  - d. Costs of the application shall abide the outcome of the reference.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26<sup>TH</sup> APRIL, 2024**

**HON. JOYCE AKINYI OSODO.....(PANEL CHAIRPERSON)**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON GAKUHI CHEGE .....MEMBER**

In the presence Muthomi for tenant/applicant and Ndege for Landlord/Respondent .

