



**Gathuma v Muiru (Tribunal Case E603 of 2022)  
[2023] KEBPRT 365 (KLR) (9 June 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 365 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E603 OF 2022  
A MUMA, VICE CHAIR  
JUNE 9, 2023**

**BETWEEN**

**JOSEPH MWAURA GATHUMA ..... APPLICANT**

**AND**

**CAROLINE MUIRU ..... RESPONDENT**

**RULING**

**A. Parties and their representatives**

- a. The tenant/Applicant Joseph Mwaura is the tenant and rented space on the suit property.
- b. The firm of Dennis Gicheru Advocates represent the tenant.
- c. The Respondent caroline muiru is the landlord and rented out space to the tenant.
- d. The Firm of J Maluki & Company Advocates represents the Respondent.

**The background of the dispute**

1. The Tenant has filed a reference and an application dated July 7, 2022 seeking break in orders since the premises were unlawfully locked by the landlord.
2. The landlord has responded vide an affidavit dated December 23, 2022 disputing the averments by the tenant and stating that the tenant abandoned the premises.
3. The Tribunal gave orders on October 18, 2022 requiring the parties to file papers on damages.

**Issues for determination**

4. I have carefully considered all pleadings and evidence before me. I find that one key issue falls for determination;



- a. Whether the Tenant is entitled to damages?

## Analysis and determination

### a. Whether the tenant is entitled to damages

5. Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishment\) Act](#) Cap 301 provides that;

In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit.

6. The orders referred to include an order to award damages. The power of the Tribunal to assess and award damages was confirmed by the Environment and Land Court in E.L.C Appeal No. 19 of 2021 where the Court referred the matter back to the Tribunal for assessment of damages for loss of tenancy.

7. Damages may be in the form of general or special damages. While general damages are to be assessed by the Court, Special damages must be specifically pleaded and strictly proved by evidence. The Court in differentiating between special and general damages in the case of [Antique Auctions Ltd v Pan African Auctions Ltd](#) [1993] eKLR stated that;

“Compensation for a wrong committed could be claimed as general damages or special damages. In general damages compensation cannot be quantified but will be assessed by the court. In the case of special damage, such claim of the loss must be specifically pleaded and strictly proved. Proof of damages is by evidence and the Court will decide each case on a balance of probability”

8. Similarly, the Court of Appeal stated its position on special damages in the case of [Richard Okuku Oloo v South Nyanza Sugar Co Ltd](#) [2013] eKLR as follows:

“We agree with the learned judge that a claim for special damages must indeed be specifically pleaded and proved with a degree of certainty and particularity but we must add that, that degree and certainty must necessarily depend on the circumstances and the nature of the act complained of.”

9. On October 18, 2022, the Tribunal directed the Tenant to file an affidavit of loss of business and income from the business since they allege that the shop was closed by the Respondent. The said affidavit was filed with a claim of damages in the sum of Kshs 237,543.00 being loss of business from the shop having been closed for 2 months, some goods allegedly missing and others having gotten spoilt because of the closure.
10. In awarding special damages, I find that the Tenant has failed to strictly prove the loss as claimed. The Tribunal vide an order dated July 14, 2022 ordered that the premises be reopened and the tenant be allowed to access the premises.
11. The OCS in compliance with the order filed a report dated August 30, 2022 and informed the Tribunal that the reopening proceeded successfully with no incidences. As such I find it suspicious that the tenant now claims that some goods were missing and that some were spoilt.
12. Additionally, I take note of the fact that it is the tenant who abandoned the premises forcing the landlord to lock it for the safety of the goods.



13. In awarding general damages, this Honorable Tribunal is guided by its decision in Tribunal case No 8 of 2019; *Robert Ayieko Angoi v Lena Serange* where it stated that;
- “General damages are compensation awardable by the Tribunal or Court as an assessment arrived at by considering the total effect of loss suffered by the Applicant and hence cannot be quantified by the applicant but assessed by the Court while taking into account various factors.”
14. In *Rose Wangui Githioni v Nancy Nyambura Maina* [2017] EKLR, the Tenant was awarded general damages of Kshs 300,000.00 plus costs and interests. The Landlord lodged an appeal on the ground that the trial Court erred in awarding general damages in a case of breach of contract. The Court upheld the decision of the trial Court as it was convinced that the Landlord’s actions were oppressive, high-handed, outrageous insolent or vindictive.
15. In its decision, the Court relied on the case of *Marine Management Association & Another v National Maritime Authority* (2012) 18NWL 504 where the court stated that;
- “Whereas the general principle is that courts do not normally award damages for breach of contract, there are exceptions such as when the conduct of the respondent is shown to be oppressive, high-handed, outrageous insolent or vindictive. “
16. The actions of the Landlord in this cause do not fall within these exceptions. The landlord adhered to the directions of this Tribunal which ordered them to re-open the business.
17. Additionally, I take note that the tenant was in arrears despite being ordered by the Tribunal to pay rent for the months of September and October 2022. The Tenant is therefore the one in the Landlord’s debt for the outstanding rent.
18. In light of the foregoing, and having assessed the claim by the Tenant and the Landlord, I do not find the claim for damages and loss of business by the tenant warranted.
19. I however find that the landlord should be compensated for the two months rent that the Tribunal ordered to be paid being Kshs. 20,000.00 at the rate of Kshs 10,000.00 per month failure to which the landlord was at liberty to take back possession of the premises. The landlord was gracious enough not to evict the tenant at that time despite the amount not being paid.

## **Orders**

- a. The upshot is that the tenants reference and application dated July 7, 2022 is dismissed in the following terms;
- b. The tenant shall pay to the landlord Kshs 20,000 being arrears owing from the rent due to the landlord as per the orders of this Tribunal on September 5, 2022.
- c. The Landlord shall have Costs assessed at Kshs. 10,000.00.

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

**Judgement** dated, signed and delivered virtually by **Hon. Muma** this **9<sup>th</sup> day of June 2023** in the Presence of **Kathike** for the Landlord and **in the absence** of the Tenant.



**HON. A MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

