



REPUBLIC OF KENYA



**Kariuki v Peter t/a Mlajasho Company Limited (Tribunal Case
E768 of 2022) [2024] KEBPRT 1000 (KLR) (25 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1000 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E768 OF 2022**

P MAY, MEMBER

JUNE 25, 2024

BETWEEN

BRIAN GACHEGA KARIUKI TENANT

AND

MARY NDUTA PETER T/AMLAJASHO COMPANY LIMITED . RESPONDENT

RULING

1. The present proceedings were commenced through the tenant's complaint filed on 29th August, 2022 challenging the landlord's notice of eviction and disputing rent arrears. Contemporaneous with the complaint, the tenant filed an application brought under certificate of urgency seeking for orders of temporary injunction. The parties actively prosecuted the application even as they made attempts to settle the matter amicably outside the Tribunal. On 18th July, 2024 the parties were absent and were directed to take dates at the registry but the parties did not take any action. The matter was left into dormancy.
2. The landlord would resuscitate the present proceedings through the application dated 17th January, 2024 seeking for a plethora of orders including orders of temporary injunction restraining the tenant from accessing the demised premises. The landlord further sought for orders to have the Tribunal appoint an assessor to make a report on the structured adjustments made by the tenant on the demised premises.
3. The application was opposed by the tenant through the Replying Affidavit sworn on 23/4/2024. The tenant stated that they were still pursuing negotiations with a view of settling the matter out of court. He stated further that the contrary to the allegations that he had undertaken renovations at the demised premises outside the structure, he had only undertaken partitions based on the recommendations of the Pharmacy and Poisons Board. The tenant stated that they made the partitions for temporary use. The tenant maintained that they were up to date in payment of rent.



4. The parties elected to canvass the application by way of written submissions. I have considered the application, the response thereto and the submissions on record and would proceed as follows:
5. The prayers sought in the present application and the application filed by the tenant earlier are those for orders of temporary injunction. The power to grant a temporary injunction is discretionary. In this regard, the Tribunal shall rely on the locus classicus case of *Giella v Cassman Brown & Co. Ltd* [1973] E.A 385, which outlined the conditions for the grant of a temporary injunction to the effect that; first, an applicant must show a prima facie case with a probability of success, secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. And thirdly, if in doubt, the court will decide an application on the balance of convenience.
6. In the present proceedings the parties do not dispute to the existence of the landlord and tenant relationship. The landlord has however disputed the use of the premises stating that the same were to be used for residential purposes thus ousting the jurisdiction of the Tribunal. According to an inspection carried out on 11th November, 2022 the premises are currently used as a chemist. In the present circumstances it is difficult to determine at this stage the rights of the parties in a conclusive manner without calling for additional evidence.
7. On whether the tenant shall suffer irreparable harm which cannot be adequately compensated by way of damages, the tribunal draws guidance from the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR wherein it was stated; “Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”
8. The tenant herein has been operating a chemist on the demised premises for a period of 5 years. Other than the operating costs which include the licenses procured for the same, he has definitely built some goodwill which may be difficult to quantify at this stage. The Tribunal also takes cognizance that the parties had initially made attempts to settle the matter out of the Tribunal.
9. In the end, the applications dated 29/8/2022 and 17/1/2024 are settled in the following terms:
 - a. The tenant shall remain at the demised premises subject to payment of rent and undertaking other obligations during the pendency of the present proceedings.
 - b. The tenant shall not notify the landlord in writing of any renovations to be undertaken.
 - c. The parties to file paginated bundle of documents and statements that they wish to rely on during the hearing within 7 days.
 - d. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25TH DAY OF JUNE, 2024

HON. PATRICIA MAY MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Nyong for the Applicant and Ombongi for the Landlord

Court: Mention on 17.07.2024

HON. PATRICIA MAY - MEMBER



BUSINESS PREMISES RENT TRIBUNAL

