



REPUBLIC OF KENYA



**Wanjiku v Kanyingi (Tribunal Case E011 of 2023)  
[2023] KEBPRT 432 (KLR) (14 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 432 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E011 OF 2023  
A MUMA, MEMBER  
JULY 14, 2023**

**BETWEEN**

**MERCY WANJIKU ..... APPLICANT**

**AND**

**JAMES KANYINGI ..... RESPONDENT**

**RULING**

**A. Parties And Representatives**

1. The Applicant Mercy Wanjiku is the tenant and rented out space from the Respondent on the suit property known as Plot No 1427 for a wines and spirits in Embu. (hereinafter known as the ‘tenant’)
2. The tenant/applicant appears in person in this matter.
3. The Respondent James Kanyingi is the Landlord and the proprietor of the Suit Property known as Plot No 1427. (hereinafter known as the ‘Landlord’)
4. The firm of M/S Wanjiku & Partners Advocates represent the Landlord/Respondent in this matter.

**B. The Dispute Background**

5. The tenant avers that the landlord locked their premises on January 29, 2023 with all their trading goods and allegedly took their money being Kshs 50,000.00 and beer stock.
6. As a result of the above, the Tenant has filed a Reference and a Notice of Motion application dated February 10, 2023 under section 12(4) of the [Landlords and Tenants \(Shops, Hotels and Catering\) Establishments Act](#) Cap 301. The tenant was seeking orders restraining the landlord from evicting them from the premises, that the tenant be reinstated back into the premises and that the landlord return the money they allegedly took from the tenant’s premises.



7. The landlord had in response to the tenant's reference and application filed an undated Notice of Preliminary Objection questioning the Jurisdiction of the Tribunal on the premise that the Agreement between the parties was for a period of more than five years. The same was however withdrawn on April 5, 2023.

#### **C. Tenant's Claim**

8. The Tenant has filed a Reference and a Notice of Motion Application dated February 10, 2023 seeking that the Landlord be restrained from evicting them from the premises and that they be reinstated back to the premises.

#### **D. Landlord's Claim**

9. The Landlord had filed a Notice of Preliminary Objection wherein the landlord was challenging the Jurisdiction of the Tribunal on the grounds that the lease agreement between the parties was for a period of more than five years. The same was however withdrawn on April 5, 2023.
10. The landlord has also filed A Replying Affidavit dated April 26, 2023

#### **E. List Of Issues For Determination**

11. The issues raised for determination are as follows;
  - a. Whether the Tenant has defaulted in their obligation to pay rent and as a result whether the landlord is entitled to vacant possession of the premises?

#### **F. Analysis And Findings**

##### **Whether the Tenant has defaulted in their obligation to pay rent and as a result whether the landlord is entitled to vacant possession of the premises?**

12. The tenant approached this tribunal by way of the reference dated February 10, 2023 in opposition to the landlord's action of locking the premises with their goods inside. They further allege that the landlord took their money being Kshs 50,000.00 and beer stock.
13. The landlord in their replying affidavit dated April 26, 2023 as well as their witness statement of even date that they indeed locked the premises. They however state that they did this pursuant to the provisions of Clause 9 of the Lease Agreement dated June 8, 2021 entered into between themselves and the tenant which provides as follows;

' THAT incase of rent arrears for a period of two months the landlord shall take possession of his premises without any other conditions.

14. The tenant claims that they are only in arrears of Kshs 5,000.00 an assertion that the landlord has disputed and presented that the tenant was in arrears of Kshs 51,400.00 being arrears accrued for the year 2022 and that the same was still accruing for the year 2023.
15. The landlord has presented an Mpesa Statement which shows the payments made by the tenant and the months for which they allege that the tenant has defaulted being the months of February, May (Kshs 1000.00), June, July, August and October 2022.



16. I have perused through the said Statement and I agree with the assertions of the landlord. I additionally take note of the fact that this Tribunal ordered on May 16, 2023 that the tenant file their Mpesa Statement on or before May 19, 2023.
17. Having perused the file and gone through the Mpesa Statements availed in the file, I am persuaded to agree with the claim by the landlord that the tenant is in arrears. The tenant has failed to provide any evidence to the contrary or to put to question the landlord's statement.
18. In addition to the above, the tenant has failed to prove on a balance of probability, their assertion that the landlord took money and beer stock from the premises hence I cannot order that the same be returned.
19. I also take note that after the matter came up for hearing on February 16, 2023 the Tribunal ordered that the landlord open the premises an order with which they complied.
20. The landlord has been gracious enough to accommodate the tenant but the same has not been reciprocated by the tenant in their obligation to pay rent or clear their arrears.
21. In light of the foregoing, I therefore proceed to order as follows;

#### **G. Orders**

- a. The upshot is that the Tenant's Reference and Application dated February 10, 2023 are hereby dismissed in the following terms;
- b. The tenant shall clear the arrears of Kshs 91,400.00 being Kshs 51,400 accrued for the year 2022 and Kshs 40,000.00 for the year 2023 on or before July 31, 2023 failure to which the landlord shall be at liberty to distress for rent and take back vacant possession of the premises break in if need be.
- c. OCS Embu Central Police Station to assist in compliance.
- d. Each party shall bear their own Costs.

**HON A. MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 14<sup>TH</sup> DAY OF JULY 2023 IN THE ABSENCE OF THE TENANT AND IN THE PRESENCE OF HALAI HOLDING BRIEF FOR WANJIKU FOR THE LANDLORD.**

**HON A. MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

