



**Matoke v Sarar (Tribunal Case E038 of 2023)  
[2023] KEBPRT 1296 (KLR) (16 August 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1296 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E038 OF 2023  
CN MUGAMBI, CHAIR  
AUGUST 16, 2023**

**BETWEEN**

**GEORGE MATARA MATOKE ..... APPLICANT**

**AND**

**DOUGLAS OBUBA SARAR ..... RESPONDENT**

**RULING**

**Introduction**

1. The tenant's notice of motion dated 13.6.2023 seeks orders of injunction restraining the Respondents from in any way interfering with the tenant's business known as Menyikwa Classical Hotel at Menyikwa Shopping Center. The Applicant has also sought the assistance of the OCS Kisii Central police station in ensuring compliance with the court orders.
2. The application is supported by the affidavit of the tenant and opposed by the Respondent's replying affidavit.
3. On 11.7.2023 when this matter came up for hearing, the parties decided that they were going to rely on the affidavits on record and requested the Tribunal to make a ruling on that basis.

**The Applicant's depositions**

4. The tenant has sworn an affidavit in support of his application wherein he has deposed that he is up to date with the payment of his monthly rent of Kshs. 18,000/= and further that the landlord has issued him with a notice to vacate the suit premises.
5. That the tenant has sought to know why the landlord wishes to evict him
6. The tenant has also deposed that if an order of injunction is not issued, he stands to suffer irreparable injury while if the orders are issued, the landlord stands to suffer no prejudice.



7. The tenant therefore depones that he has established a prima facie case and that it is in the interests of justice that the orders sought be granted.

### **The Respondent's depositions**

8. The Respondent has deponed in his affidavit sworn on 26.6.2023, that the reference filed by the tenant is a non-starter as the entity sued is incapable of being sued as such and the reference should therefore be struck out.
9. That it has also been deponed by the Respondent that the Applicant is in rent arrears amounting to Kshs. 156,000/= as at June 2023 and the Applicant is therefore underserving of the orders it has sought.
10. The Respondent has deponed that he is the one who stands to suffer prejudice if the orders sought are granted.

### **Analysis and determination**

11. The only issue that arises for determination in this matter is; whether the Applicant/tenant is entitled to the orders sought in his application.
12. The tenant's main complaint is that the landlord has issued to him a demand notice that he vacates the suit premises. the tenant has deponed that the landlord has issued the notice to vacate even though the landlord has received rent in full.
- The landlord/Respondent on his part has deponed that the tenant is in rent arrears amounting to Kshs. 156,000/= as at June 2023. The affidavits of both parties do not exhibit any annexures in support of their respective allegations. I however note that the Respondent admits to writing an informal letter to the tenant but which the Respondent denies is a notice to vacate.
13. The tenant has not stated whether the notice issued to him is oral or in writing. I am not therefore convinced, on the basis of the reference placed before me that the tenant has been issued with a notice to vacate the premises.
14. The Respondent's claim that the tenant is in rent arrears of Kshs. 156,000/= is also not supported by any evidence. The landlord is obligated under Section 3 of Cap 301 to keep a rent book wherein all transactions regarding the tenancy ought to be recorded. He has not exhibited any evidence of the rent book. I am therefore not able to make a finding in his favour as I find the allegation not proved at this stage.
15. The Respondent has raised an issue that he is incapable of being sued, no reasons have been given by the landlord why he thinks he cannot be sued and I find that this argument is unsustainable in the circumstances.
16. It is my view in the circumstances that the tenant has not established a prima facie case against the Respondent to warrant the grant of the orders sought and the application by the tenant dated 13.6.2023 is dismissed with costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16<sup>TH</sup> DAY OF AUGUST 2023.**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**8.2023**

**In the presence of;-**



George Matara.....tenant

In the absence of the landlord

