



**Jacob v Kobia (Tribunal Case E017 of 2022)
[2023] KEBPRT 370 (KLR) (Civ) (5 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 370 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E017 OF 2022
GAKUHI CHEGE, VICE CHAIR
MAY 5, 2023**

BETWEEN

ABRAHAM MICHUBU JACOB TENANT

AND

PETER THUANE KOBIA RESPONDENT

RULING

1. On January 12, 2023, this Tribunal delivered a ruling pursuant to which the parties were directed to simultaneously file and exchange statements of rent account from January 1, 2020 up to and including the date of filing thereof within thirty (30) days thereof.
2. This Tribunal also directed its Rent Inspector to visit the suit premises for purposes of establishing whether the same is locked and/or if the tenant's properties are still held therein before any further orders in the matter.
3. I have checked the record and there are no rent account statements filed by the parties. Secondly, I note from the record that the tenant filed a written witness statement dated March 7, 2023 explaining how the suit premises was on December 16, 2020 closed by the landlord. The incident was reported at Mikinduri Police Station vide OB No 31/December 21, 2020. The landlord thereafter issued the tenant with a notice to vacate on January 5, 2021.
4. The tenant denies closing the suit premises and having taken the keys to the area chief. He denies being in rent arrears as at the date of closure of the suit premises without notice. He was paying rent in cash on diverse dates. The tenant claims to have paid a total of Kshs 41,500/- for the period up to the date of closure of the premises. The tenant therefore prays that his applications dated May 13, 2022 and July 7, 2022 be allowed.



5. Pursuant to the order for inspection of the suit premises, the same was done on February 22, 2023 and a report filed herein. It confirmed that the premises was locked on the front and rear side. The keys to the premises were held at the area chief's office. The chief was interviewed by the Rent Inspector and confirmed that the keys were taken to the office by the tenant. The chief accompanied the Rent Inspector and the tenant to the suit premises but the tenant refused to enter therein on being requested to do so by the latter. Inside the shop, there were items like soaps, tea leaves among others whose photos were taken and attached to the report. The Applicant confirmed that the items were his but alleged that it is the Respondent who had closed/locked the premises. The premises were therefore locked and the keys kept by the area chief.
6. I have examined the said report against the pleadings filed herein and I am unable to find any evidence that the landlord had closed the suit premises. Having been interviewed by the Rent Inspector stated that it is the tenant who took the keys to his office and handed the same over to the area manager. The tenant behaved in a weird manner when the premises were visited and refused to enter the same for inspection.
7. The tenant has exhibited a letter by MG Kaume & Co Advocates dated January 5, 2021 in which he was being demanded to pay a sum of Kshs 36,500/-. No evidence of the said payment has been tendered by the tenant and the claim that he paid a total of Kshs 41,500/- on diverse dates is not backed by any evidence. In absence of proof of how the payments were made and the specific dates of payment, I am unable to believe the tenant in view of Section 107(1) of the Evidence Act Cap 80 which provides as follows:-

“(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”.

8. In his application dated May 13, 2022, the tenant is seeking for stay of attachment of his property on plot no Meru - Akaiga/5627, Meru Municipality. In his application dated July 7, 2022, he seeks for an order allowing him to break into the suit premises with the assistance of OCS and that the costs of Kshs 5,000/- granted on June 20, 2022 be awarded for the instant application.
9. Having been found to have closed the suit premises upon inspection by the Tribunal's Rent Inspector, the tenant cannot be allowed to benefit from his own wrong in line with the decision in the case of *Mary Wanjiku & Challa Holdings Ltd v Kenya Commercial Bank Limited* being Mombasa HCCC No 250 of 2000 where it was held as follows:-

“Equity will not allow the plaintiff to gain from his wrongful act nor will a court aid a man to derive advantage from his wrong for such would be unconscionable”.

10. I find it mischievous for the tenant to have closed the suit premises and thereafter running to this Tribunal to seek equitable remedies against the landlord. This amounts to abuse of court process and since he who comes to equity must come with clean hands, the tenant's applications must fail.
11. Costs of any application or matter before the Tribunal are at its discretion under section 12(1) (k) of Cap. 301, Laws of Kenya but always follow the event. I have no reason to grant costs to the Respondent in this case as I have not seen a response to the applications.
12. In conclusion, the following final orders commend to me in this case:-
 - a. The tenant's applications dated May 13, 2022 and July 7, 2022 are hereby dismissed.



- b. The tenant's complaint dated May 13, 2022 is equally dismissed as it raises the same issues as the said applications.
- c. Each party shall bear own costs of the case.
- d. The tenant shall immediately pay all the rent arrears and collect the keys to the suit premises from the area chief and continue with his business on the same terms as before failing which the landlord shall be at liberty to use lawful means to recover the rent arrears including distress.

It is so ordered.

RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 5TH DAY OF MAY 2023.

HON. GAKUHI CHEGE

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of:

Landlord in person

Tenant absent.

