



Vantoh v Njuguna & another (Tribunal Case E156 & E171 of 2023) [2024] KEBPRT 880 (KLR) (17 June 2024) (Ruling)

Neutral citation: [2024] KEBPRT 880 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E156 & E171 OF 2023
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
JUNE 17, 2024**

BETWEEN

PAUL ODUOR VANTOH APPLICANT

AND

ROBERT KIARIE NJUGUNA 1ST RESPONDENT

CLIFFTONE WAFULA 2ND RESPONDENT

RULING

1. This Ruling is with a view to giving directions on the matters that have been pending before the court for sometime now. Without the co-operation of the landlord, there does not seem to be much progress being made towards the hearing of this matter which defeats the legal maxim that justice delayed is justice denied.
2. The Tenant approached this court vide case No. E156 of 2023 filed at Kakamega and in his reference complained that :

“The landlord has been harassing, intimidating me with threats of eviction by sending auctioneers in my business premises, issuing me with an illegal notice of terminating my tenancy dated 20th September 2023 attached herein and also took away my business goods without an order from the Rent Tribunal court or any other court of law contrary to Cap. 301 Laws of Kenya. I request the rent Tribunal court and OCS Busia (K) Police Station to order the landlord and auctioneer to stop harassing me with threats of eviction and return my business goods in good condition”.
3. The reference dated 3rd October 2023 was said to have been anchored on Section 12 (4) of the [landlord and Tenant \(Shops, Hotels and Catering establishments\) Act](#) (Cap 301) which we hereinafter refer to as “the Act”. It was accompanied by an undated notice of motion application which principally sought



that the Tenant be allowed quiet possession of the demised premises. That the landlord be restrained from issuing illegal termination notices or sending him auctioneers to intimidate him and finally to have the landlord return to him all the goods/merchandise irregularly attached from him.

4. On his part, the landlord filed case No. E171/2023 at Kakamega. It is not clear whether he was aware of case no. E156/2023 earlier filed by the Tenant at the same station. His reference dated 2/11/2023 was said to be founded on Section 12(4) of the Act. He complained that:-

“The Honourable court do issue orders of termination of tenancy between the Applicant/
Landlord and Respondent/Tenant due to non-payment of rent”.

5. The reference was accompanied by a notice of motion application of the same date. From the notice of motion, it is apparent that the landlord knew of the existence of the Tenant’s case No. E156 of 2023. One of his prayers is that his case no. E171 of 2023 be consolidated with E156/2023. He also sought for the termination of the Tenancy and for the Tenant to be compelled to pay all the rents in arrears alleged to be Kshs.166,000/- before he delivered vacant possession of the premises.
6. When file no. E171/23 came up for hearing before me on the 27/11/2023 in the presence of Mr. Ashioya counsel for the landlord and the Tenant in person, the following directions were given:-
- i. The Tenant shall have 7 days to file and served a supplementary Affidavit and submissions.
 - ii. The landlord shall have 7 days on service to file and serve any supplementary affidavits and submissions.
 - iii. The Tenant shall pick his tools of trade as directed by the court under the supervision of the OCS Busia Police Station.
 - iv. Mention on the 11/12/2023 to confirm compliance and take a date for Ruling.
 - v. The interim orders on record are extended.
7. When the matter came up on the 11/12/2023 a earlier directed there was no compliance by the parties and the same was adjourned to be mentioned again on the 23/1/2024. In the meantime, this court had on the 15/11/2023 made the following directions in case No. E156 of 2023:-
- a. The parties have 7 days each to file any supplementary affidavits and documents if deemed necessary and exchange the same.
 - b. The Tenant and the landlord’s lawyer shall sit and work towards reconciling the accounts on rental payments.
 - c. That the file Nos. E156/2023 and E171/2023 are hereby ordered consolidated with file No. E156/23 being the lead file.
 - d. The interim orders are extended.
 - e. Mention on the 27/11/2023 for further directions.
8. As earlier alluded to, on the 27/11/2023, this matter was mentioned under file no. E171/2023 and directions also taken as earlier in this Ruling stated. From the record, Mr. Ashioya the counsel for the landlord and his client did not attend court on the 23/1/2024 and have since absented themselves from these proceedings.
9. Further from the evidence on record, it is clear that the counsel for the 1st respondent had always been served with all the court’s processes but it is not clear as to why he decided to absent himself from these



proceedings. It is therefore inexplicable to read the letter dated 4/3/2024 by Mr. Ashioya counsel for the landlord. The least we comment about that letter at this particular time, the better.

10. In the meantime, Oliver Simiyu the owner of Munex Auctioneers came to court on the 28/2/2024 on the strength of summons by this court and denounced cliffstone Wafula as stranger to him and to Munex auctioneers. He indicated that he had notified Ashioya advocates of the fraud that was Cliffstone Wafula by the letter dated 30/10/2023. He had also reported the matter at Busia Police Station vide OB No. 24/27/10/2023.
11. With his evidence, Oliver Simiyu and M/S Munex auctioneers were discharged from these proceedings. Since then, this matter has been to this court on various occasions. In all those instances, the landlord and his counsel have absented themselves despite having been served. On the 1/3/2024, this court directed the Tenant to pay rent including the arrears thereof to this Tribunal.
12. On the 14/5/2024, this court further made directions to the effect that it would deliver a Ruling on the way forward in this matter.
13. From an overview of the entire pleading before this court, it is obvious that there are heavy issues that need determination. The same include but are not limited to the following:-
 - i. Whether there is a valid notice for the termination of the landlord/Tenancy relationship herein.
 - ii. Whether the Tenant is in rent in arrears and if at all how much.
 - iii. Whether the distress for rent by the Landlord was lawful.
 - iv. Whether the Tenant should have the goods attached from him restored or be compensated for the same.
 - v. The costs of the suit.
14. In our view, the determination of these issues would effectively determine the Tenants/application and reference both dated 3/10/2024.
15. We therefore direct that both parties do comply with order 11 of the Civil Procedure Rules by filing and exchanging all necessary evidence, documents and statements within the next 30 days from the date of this Ruling to allow for the fixing of this matter for hearing on priority.
16. The matter will be mentioned on the 22/7/2024 for compliance and to take a date for the hearing.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY ON THE 17TH DAY OF JUNE 2024 AT NAIROBI.

HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI

PANEL CHAIRPERSON MEMBER

BUSINESS PREMISES RENT TRIBUNAL BPRT

