



**Mwaura v Kimeu (Tribunal Case E824 of 2023)**  
**[2023] KEBPRT 723 (KLR) (22 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 723 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**TRIBUNAL CASE E824 OF 2023**  
**A MUMA, AG. CHAIR**  
**NOVEMBER 22, 2023**

**BETWEEN**

**JESSE THUKU MWAURA ..... TENANT**

**AND**

**LAWRENCE KIMEU ..... LANDLORD**

**RULING**

**A. Parties and their Representatives**

1. The Tenant/Applicant (hereinafter referred to as “the Tenant”) has rented out the unidentified business premises situate at Mlolongo (hereinafter referred to as “the premises”).
2. The Tenant appears in person.
3. The Landlord/Respondent (hereinafter referred to as “the Landlord”) has let out the premises to the Tenant.
4. The Landlord appears in person.

**B. Dispute Background**

5. The Tenant is aggrieved by the Landlord’s action to confiscate his tools of trade and to lock the premises. On the other hand, the Landlord contends the Tenant has failed to honor his rent obligations for a period of time and further challenges the jurisdiction of this Tribunal.

**C. The Tenant’s Case**

6. The Tenant approached this Tribunal vide a Reference and application both dated 23<sup>rd</sup> August 2023.



7. The Tenant alleges that the Landlord had inter alia illegally broken into the premises and carted away his goods damaging them in the process. The Tenant claims that he has since lost his source of livelihood.
8. Additionally, the Tenant claims that all this was done despite not having been issued with a Notice of Termination of Tenancy as required under Cap 301. It is the Tenant's case that he was only in arrears equivalent to four months' rent.
9. According to the documents filed by the Tenant, he states that he has done repairs, improvements and renovations at a cost of Kshs. 325,000/=.
10. The Tenant additionally filed a Further Affidavit dated 25<sup>th</sup> September 2023 where he stated that he has been constructively evicted from the premises given that the Landlord took away his goods and tools of trade from the premises.
11. He further maintains that there is still a Landlord-Tenant relationship between the parties since the Tribunal prohibited the Landlord from engaging another Tenant.
12. The Tenant filed Submissions dated 27<sup>th</sup> September 2023 in support of his Reference and application.

#### **D. The Landlord's Case**

13. The Landlord files a Replying Affidavit dated 14<sup>th</sup> September 2023 where he deponed that the Tenant was in arrears totaling to Kshs. 125,000/=.
14. The Landlord also challenged the jurisdiction of this Honourable Tribunal to deal with the matter stating that there was no landlord-tenant relationship between the parties and therefore this Tribunal lacks the requisite jurisdiction under Cap 301.

#### **E. Issues For Determination**

15. From the background and the parties' respective cases provided hereinabove, I am satisfied that the following issues are ripe for determination:
  - i. Whether this Tribunal possesses the requisite jurisdiction to hear and determine this matter?
  - ii. Whether the eviction was proper?

#### **F. Analysis And Determination**

##### **i. Whether this Tribunal possesses the requisite jurisdiction to hear and determine this matter?**

16. I have given full consideration to the Applications, the Replying Affidavit in response thereto and the parties respective Submissions.
17. I will first deal with the question of jurisdiction as this lies at the heart of any matter before this Tribunal. The Preamble of the Landlord and Tenants (Hotels, Shops and Catering Establishments) Act Cap 301 ("the Act") dictates the objects of the Act as follows;

“An Act of Parliament to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation.” (emphasis added)
18. Tenant has been defined as follows “in relation to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding, and includes a sub-tenant.”



19. As per the Orders of this Tribunal issued on 25<sup>th</sup> August 2023, the Landlord was ordered to maintain the status quo obtaining and not to let the premises to another Tenant.
20. Accordingly, the Tenant herein is a Tenant as per the provisions of the Act since as per section 2 of the Act a Tenant is a person for the time being entitled to the tenancy whether or not they are in occupation.
22. In view of the above sentiments, I find that this Tribunal is clothed with jurisdiction to deal with this matter.

## **ii. Whether the eviction was proper?**

22. Section 4 (2) of the Landlord and Tenants (Hotels, Shops and Catering Establishments) Act Cap 301 (“the Act”) provides as follows;
 

“A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.”
22. In the present matter, the Landlord has not produced any evidence to demonstrate that a notice in the prescribed form was issued to the Tenant. The Act outlines the procedure for terminating a controlled tenancy in clear terms. Accordingly, a controlled tenancy cannot be terminated unless specifically authorized by the Act.
22. Section 4 (2) of the Act mandates a Landlord to give a notice of termination in the prescribed form. Therefore, the purported eviction is illegal and unlawful as per the Act.
22. However, it is clear that the Tenant is in rent arrears of about KShs. 125,000/=. The Tenant has failed to honor his rent obligations for a couple of months. The Landlord is entitled to receive rent monthly and any default by the Tenant is a threat to his source of income which is shunned by this Tribunal.
22. On the Tenants claim for damages, no evidence was adduced before this Tribunal to demonstrate the extent of damage and enable the Tribunal to make an objective assessment of any amount.
22. In any event the repairs and renovations claimed appear to reconcile with the rent claimed and even if proved would have gone towards off setting the arrears claimed.

## **G. Determination**

21. In the upshot, I find that this Tribunal partially allows the Reference as follows
  - a. The Tenant is hereby ordered to pay the rent arrears amounting to Kshs. 125,000/= within fifteen (15) days of delivery of this Ruling failure to which the Landlord is at Liberty to distress;
  - b. The Tenant to seems to have abandoned the premises and the landlord is allows to take back vacant possession of the suit premises.
  - c. The OCS Mlolongo to ensure compliance with order (a) above;

**HON A. MUMA**

**Ag CHAIR/MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 22<sup>ND</sup>  
DAY OF NOVEMBER 2023 IN THE PRESENCE OF THUKU FOR THE LANDLORD AND NO  
APPEARANCE FOR THE TENANT**

**HON A. MUMA**

**Ag CHAIR/MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

