



**Ushindi Feeds Limited v Kenya Farmers Association Limited (Tribunal
Case E128 of 2023) [2024] KEBPRT 683 (KLR) (26 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 683 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E128 OF 2023
CN MUGAMBI, CHAIR
MARCH 26, 2024**

BETWEEN

USHINDI FEEDS LIMITED APPLICANT

AND

KENYA FARMERS ASSOCIATION LIMITED RESPONDENT

RULING

Introduction

1. The Tenant's notice of motion dated 17.7.2023 seeks orders to the effect that the Respondent/Landlord do provide quiet and peaceful occupation of the suit premises to the Applicant/Tenant pending the hearing and determination of the main suit. The Tenant/Applicant has also sought an order that he be allowed to continue paying rent as usual or through the Tribunal offices till the determination of this suit.

The Tenant's depositions

2. The Tenant's affidavit in support of its Application sworn by Mr. Dennis Tallam may be summarized as follows:-
 - a. That on 12.7.2023, the Tenant was served with a proclamation of attachment letter from Lifewood Traders Auctioneers who had been instructed by the Landlord/Respondent.
 - b. That the Tenant does not dispute owing the Landlord rent arrears in the sum of KShs. 610,000/= and has not refused to pay or neglected its duty to pay the said rent.
 - c. That the delay in the payment of the rent has been occasioned by the effects of covid 19 and the current hard economic times.



- d. That the Tenant is agreeable to settling the rent arrears in terms mutually agreed upon by the parties.
- e. That the intended execution is irregular as the Tenant had not been served with any termination notice which is a requirement of the law.

The Respondent's depositions

- 3. The Replying affidavit of the Respondent sworn by David Tobiko Naeku may be summarized as follows:-
 - a. That as at 30.9.2023, the Tenant was in rent arrears amounting to Kshs. 670,684/= and attempts to recover the rent arrears have been unsuccessful and hence the distress for rent.
 - b. That the Applicant's promises to settle the rent arrears have not been met.
 - c. That whereas the Landlord has complied with the terms of the injunction issued by the Tribunal, the Tenant has done nothing to ameliorate the situation and the rent keeps accruing.
- 4. The Tenant has in its further affidavit sworn on 4.2.2024 acknowledged being indebted to the Respondent to the tune of Kshs. 610,684/= but applied to be allowed to pay the monthly rent at the usual rate of Kshs. 30,000/= and Kshs. 20,000/= monthly to be applied to the arrears.

Analysis and determination

- 5. The only issue that arises for determination is whether the Tenant is entitled to the orders sought in his Application and what determination is to be made on the Tenant's Complaint filed alongside the Application.
- 6. The Tenant has prayed that it be allowed to continue paying rent as usual or through the Tribunal offices. I have read the Tenant's affidavit in support of its Application and I have not seen a single deposition in support of this prayer. It has not been suggested anywhere that the Landlord has declined to accept rent from the Tenant and in my view, this prayer has no basis and is therefore dismissed.
- 7. The Tenant admits to owing rent in the sum of Kshs. 610,684/= as at July 2023 when its representative swore the supporting affidavit. The Respondent on its part deposes that as at September, 2023, the rent outstanding was kshs. 670,684/=. The Tenant does not deny this but seeks to be allowed to liquidate the same in monthly installments of Kshs. 20,000/=.

- 8. Is the Tenant entitled to the injunctive relief it has sought against the Respondent?

I do not think so! The Tenant being in default of rent, it cannot benefit from the favourable discretion of a court of equity. In the case of; *Kyavango vs Kenya Commercial Bank & Another* [2004] eKLR, the court held as follows:-

“Secondly, the injunction sought is an equitable remedy. He who comes to equity must fulfil all or substantially all his outstanding obligations before asserting on his rights. The plaintiff has not done that. Consequently, he has not done equity.”

Further, in the case of; *Samuel Kipkorir Ng'eno & Another vs Local Authorities Pension Trust (Registered Trustees) & Another* [2013] eKLR, the court held as follows:-

“A tenant's main obligation is to pay rent as when it becomes due, for the landlord has the right to an income from the investment ...



the temporary injunction sought in the present Application is an equitable remedy at the court's discretion. He who comes to equity in huge arrears of rent is undeserving of the court's discretion. The court cannot be the refuge of a tenant who fails to meet his principal obligation of paying rent as and when it becomes due."

9. The Tenant in the instant Application is no doubt in huge rent arrears. Its proposal to liquidate the same in monthly installments of Kshs. 20,000/= does not even form part of his Application and was only introduced in the Tenant's affidavit sworn on 4.2.2024. The prayer for payment in installments is not only unreasonable in the circumstances but is also unavailable for granting for the simple reason that it does not form part of the Tenant's Application and as such the Landlord cannot be said to have been given a fair opportunity to respond to the same.
10. Consequently, I do not find any merits in the Tenant's Application dated 17.7.2023 and the same is dismissed with costs to the landlord.
11. The Tenant's complaint as far as it relates to the threat of eviction by the Landlord will go on trial for the reasons that the Landlord cannot evict the Tenant before legally terminating the tenancy.
12. The upshot of this ruling is that, the Landlord is therefore at liberty to levy distress for rent for the outstanding rent arrears as I do not find anything illegal with the said distress for rent.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF MARCH, 2024.

HON. CYPRIAN MUGAMBI

CHAIRMAN

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Omae for the Landlord

In the absence of the Tenant and Counsel

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