



Kamau v Nyaga (Tribunal Case 623 of 2019)
[2023] KEBPRT 1110 (KLR) (Civ) (16 June 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1110 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE 623 OF 2019
A MUMA, VICE CHAIR
JUNE 16, 2023

BETWEEN

JOSEPH NDIRITHI KAMAU TENANT

AND

JOAN W NYAGA LANDLORD

RULING

1. The landlord/Applicant's notice of motion dated April 14, 2023 prays for the grant of the following orders;-
 - a. That the Tribunal does ensure compliance by the tenant of the Tribunal's orders dated July 4, 2019.
 - b. That the tenant be ordered to clear his outstanding rent arrears by depositing the sum of Kshs. 6,052,637/= in a joint escrow account within fourteen (14) days, and upon payment of the rent arrears, the tenant be evicted from the suit premises.
 - c. That general damages be awarded for loss of rental income and for non-payment of rent for a duration of four years.
 - d. That the payment of the rent arrears and damages be subjected to a calculation of 14% interest from the date of the institution of the suit.
 - e. That the Respondent be cited for contempt of court for willful disobedience of court orders.

The Landlord's depositions

2. The landlord has deponed in her affidavit sworn on April 14, 2023 that on July 14, 2019, the tribunal issued orders to the effect that the landlord was not to evict the tenant, and that the landlord was



ordered to accept monthly rent payable by the tenant and issue rent receipts, the tenant was allowed to deposit the rent in the Tribunal if the landlord declined to accept the same.

3. It has also been deposed that, the tenant has never complied with the orders for the payment of rent as he last paid rent on June 19, 2019, and the rent so far accumulated is Kshs. 6,052,657/=.
4. The landlord further deposes that, due to an existing court order, she is unable to evict the tenant.
5. Further deposed that since the tenant put up structures on the demised premises, without the consent of the landlord, he should bear the costs of restoring the demised premises to their original state.

The Parties oral submissions

6. Counsel for the Applicant/landlord orally submitted that, the tenant has not complied with the orders issued on July 4, 2019 and that the last time rent was paid was on July 17, 2019. The Counsel submitted that the tenant continues to occupy the suit premises and accumulate rent arrears. According to Counsel, as at March 6, 2023, the rent outstanding was Kshs. 5,922,657/=. Further, as at April 14, 2023, the rent outstanding in arrears was Kshs. 6,052,657/=. Counsel demanded that the tenant pays out those arrears and for the other prayers, the Advocate relied on her pleadings.
7. In response, Counsel for the Respondent/tenant submitted that the landlord/tenant relationship has terminated.
8. Of the orders issued on July 4, 2019, Counsel submitted that order No. 3 specifically directed the landlord to accept the monthly payable rent from the tenant. In this regard, Counsel submitted that the tenant's complaint was against the increase of rent from Kshs. 35,000/= to Kshs. 130,000/=.
9. It is the submissions of Counsel that the issue of "rent payable" has continued to be an issue and has never been determined and the rent demand of Kshs. 6,052,657/= is based on the monthly rent of Kshs. 130,000/= which is what was being challenged and at the rate of Kshs. 35,000/= per month, the rent due would be considerably lower.
10. Counsel for the tenant has submitted that, his client is willing to pay what is payable and the court only has to determine what is payable.
11. It is further submitted that the Tribunal has no jurisdiction in this matter as the tenant has vacated the premises.
12. In rebuttal, Counsel for the landlord/Applicant has submitted that in the lease agreement signed in 2009, the rent payable was Kshs. 35,000/=: the lease of 2014 was for Kshs. 60,000/=: the lease agreement for 2019 was for Kshs. 130,000/=. According to the Counsel for the landlord, it is increment to Kshs. 130,000/= that the tenant was challenging.
13. Counsel for the landlord further submitted that the tenant is still in occupation of the suit premises and has actively sought before the Tribunal orders for quiet possession in his favour.

Issues for determination

14. The issues that arise for determination in this application are, in my view the following:
 - a. Whether there exists a landlord-tenant relationship between the parties and therefore whether the tribunal has jurisdiction to entertain this matter?
 - b. What is the rent payable by the tenant for the demised premises.
 - c. Whether the landlord is entitled to the orders sought in her application.



Issue A

15. On May 4, 2023, on the application of the Counsel for the tenant, the court ordered that an inspection report be prepared upon the rent Inspector visiting the premises. The inspection was duly carried out and a report filed. According to the report, the tenant is not operating any business at the suit premises but has retained the keys thereto, indeed he is the one who opened the premises. Further, according to the report, the tenant has insisted that he will not give up the keys to the premises to the landlord until an agreement is reached on the developments the tenant has carried out therein. What comes out clearly is that, the tenant while in constructive possession of the premises, he is not using the same for any business. I think for all practical purposes, the tenancy has collapsed but as long as the tenant continues to hold on to the premises, the landlord is entitled to rent. Whereas the Counsel for the tenant states that his client has vacated the premises, it is not clear when he vacated as no affidavit to that effect has been sworn. The tenant seems to be clinging to the developments he allegedly carried out in the suit premises and the hope of a compensation for the same. In view of the tenant's continued hold on to the premises, it is my view that, the tribunal has jurisdiction to hear and determine this matter, the fact that the tenant is not carrying out active business in the premises notwithstanding.

Issue B

16. According to the landlord's Counsel, the rent payable presently is Kshs. 130,000/=. This is, due to, according to the Counsel, the fact that the agreement for the year 2019 required that the tenant pays a monthly rent of Kshs. 130,000/=. Counsel for the tenant informed the court that the suit agreement was never executed between the parties.
17. In order to rationalize the rent payable, and in view of the different positions taken by the parties in this regard, I will review the pleadings and affidavit on the record as follows:-
 - a. The lease agreement for the year 2009, provides for the rent of Kshs. 35,000/= per month.
 - b. The lease agreement dated May 27, 2014 provides for the rent of kshs. 60,000/= per month.
 - c. The tenant's notice of motion dated July 3, 2019 and the affidavit of in support thereof does not raise the issue of rent increment.
 - d. The tenant's notice of motion dated July 26, 2019 and the affidavit in support thereof sought to injunct the landlord from increasing rent from Kshs. 35,000/= to Kshs. 200,000/= per month.
 - e. The landlord in her replying affidavit sworn on January 31, 2020 depones that the Applicant/ Tenant was originally paying rent of Kshs. 35,000/= per month but the rent was reviewed upwards by the consent of the parties and as from May 2017, the Applicant was paying Kshs. 130,000/= per month.
 - f. The landlord in the same affidavit also deponed that, in the month of June 2019, the tenant declined to execute a fresh lease agreement.
 - g. The landlord's replying affidavit sworn on 30.9.2020 has the landlord deposing at paragraph 10 thereof that upon the expiry of the 2009 lease, a fresh lease was executed on May 27, 2014 wherein the monthly rent was agreed at Kshs. 60,000/= per month.
 - h. The landlord has further deponed that, upon the expiry of the 2014 lease agreement, the rent was periodically reviewed upwards by consent of the parties and from May 2017, the tenant was paying Kshs. 130,000/= per month.



- i. I have seen the tenant's witness statement filed by the firm of Bernard Odera & Company Advocates. I quote the relevant paragraphs:
- (4) I set up a garage on the said property with the business name Pony Motors Ltd whose agreed sum for rent was Kshs. 35,000/= per month. ...I continued to pay rent diligently and even executed a new lease agreement on May 27, 2014 after the expiry of the previous lease agreement
 - (5) This agreement set the rent at Kshs. 60,000/=...during the subsistence of this lease, rent was suddenly increased and by May 2017, rent for the aforementioned property was set at Kshs. 130,000/=, I continued to pay this rent without much protest.
 - (6) The landlord attempted to increase the rent further without following the right procedures as laid down in Cap 301. I protested this increase sparking the hostility between myself and the landlord.
18. So, what was the rent payable on or about July 2019 when the tribunal ordered the tenant to continue paying the rent payable? I do not think the tenant's argument that rent was being hiked from Kshs. 35,000/= to Kshs. 200,000/= is viable on the face of the agreement of May 27, 2014 which set the monthly rent at Kshs. 60,000/=.
- That argument is further vitiated by the affidavit of the landlady which clearly demonstrate that rent was progressively, mutually and by the consent of the parties increased to Kshs. 130,000/= per month from May 2017. The tenant himself has confirmed in his statement earlier referred to, that in May 2017, rent was increased suddenly to Kshs. 130,000/= which he paid without much protest. It is the increase from Kshs. 130,000/= that the tenant protested and was according to the tenant the cause of the hostility between the parties (see paragraph 6 of the tenant's statement reproduced hereinabove).
19. In the tenant's list of documents, document No.3 is the lease agreement dated July 1, 2019. The term in the lease is to run from 1.6.2019 to November 30, 2019 at a monthly rent of Kshs. 200,000/=. This is the increase the tenant was protesting leading to her refusal to execute the new lease agreement as alluded to by the landlord. To this extent, I do find that the rent of Kshs. 200,000/= was never agreed upon nor paid by the tenant.
20. I also, in the same vein, find that the rent payable as at the time the court made the orders on July 4, 2019 was Kshs. 130,000/= which the tenant admits to having accepted and paid.
21. The landlord has stated that the tenant last paid rent on June 19, 2019. the tenant has not denied this to be the position.

Orders

19. In view of the foregoing conclusions/findings, the following orders commend themselves to me and it is hereby ordered;
- a. That the tenant shall pay to the landlord all outstanding rent arrears from July 2019 calculated at Kshs. 130,000/= per month until the date the tenant renders vacant possession of the suit premises.
 - b. The tenant is to hand over the premises to the landlord and render vacant possession of the same and in any event within the next thirty (30) days from the date of this ruling.
 - c. The tenant will bear the costs of the reference to be agreed on assessed or assessed on application by any of the parties.



d. This matter is determined on the above terms.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

JUNE 16, 2023

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF JUNE 2023

HON. ANDREW MUMA

VICE CHAIR

JUNE 16, 2023

In the presence of;

Bonyo for the landlady

No appearance by the tenant

