



Wanjala v Njuguna; Hudson Mutende t/a Ekumira Investment Ltd & another (Interested Parties) (Tribunal Case E081 of 2023) [2024] KEBPRT 580 (KLR) (26 April 2024) (Judgment)

Neutral citation: [2024] KEBPRT 580 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E081 OF 2023
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
APRIL 26, 2024**

BETWEEN

TIMOTHY ULUMA WANJALA TENANT

AND

ROSEMARY NJUGUNA LANDLORD

AND

HUDSON MUTENDE T/A EKUMIRA INVESTEMENT LTD INTERESTED PARTY

EKUMIRA MODERN STORES GROUP INTERESTED PARTY

JUDGMENT

1. By a Complaint dated 11th May 2023, the Tenant moved this Tribunal under Section 12(4) of [Cap 301](#), Laws of Kenya claiming that Rosemary Njuguna being the Landlord was harassing, intimidating and threatening him with eviction by locking his business premises with all his goods without the Tribunal's order or an order from any other court of Law.
2. He also filed a motion dated 10th May, 2023, seeking restraining orders against the Landlord from interfering with his business premises. He also seeks that the Landlord compensates him for loss of business incurred from 1st May, 2023 at the rate of Kshs 3,000/= per day until such a time when the premises will be opened.
3. In his supporting affidavit, the Tenant deposes that, he is a Tenant of the Landlord/Respondent paying a monthly rent of Kshs 7,500/= on or before 5th of every month and that he was not in any rent arrears. However, on 1st May, 2023, the Landlord closed the business premises with a padlock without any notice as shown on the photograph marked "TUW2".



4. As the Application was brought under certificate of urgency, interim orders were issued on 16th May, 2023 directing inter-alia, the re-opening of the business premises and restraining the Landlord from interfering with the Tenant's business premises pending hearing inter-partes on 27th June, 2023.
5. On 23rd May, 2023, the Landlord filed a replying affidavit sworn on the same date together with a motion of even date seeking to discharge the orders of 16th May, 2023 on grounds that the Applicant, one Timothy Uluma Wanjala was merely an employee of her daughter by name Maureen Abisaki who runs an electronic shop in the suit premises.
6. It is the Respondent's case that; on 1st May, 2023, her said daughter was indisposed and could not open her shop and only opened the following day. The Applicant being an employee gained access and continued to operate in the shop. The Applicant however ran to this Tribunal to obtain the injunction order which he used to manipulate and gain dominance over her business premises.
7. Among the documents annexed to the Respondent's replying and supporting affidavits is a tenancy agreement marked "KN1" between her as Tenant and Ekumira Investments Limited as Landlord.
8. According to the Respondent, the Applicant has been in occupation of the suit premises as an employee paying Kshs 5,500/= per month which amount was subsequently revised to Kshs 7,500/=. She denies having sublet the premises. No consent to sublet had been obtained from the Landlord. She denies being a Landlord to the Applicant.
9. The Application by the Respondent was directed to be served for hearing and determination inter-partes on 27th June, 2023.
10. On 4th August, 2023, an affidavit of one Hudson Ambayi Mutende was filed in this matter wherein it is deposed that; Ekumira Investment Limited entered into a lease agreement with the Respondent wherein she runs Changa Multi-purpose Limited. He denies that the Respondent had sublet the premises to the Applicant.
11. Through another application dated 10th April, 2023, the Respondent moved this Tribunal seeking for restraining orders against the Tenant from closing the shop. She further sought for breaking orders of the padlock placed on the door thereto inter-alia.
12. Interim orders were granted on 16th August, 2023 allowing the Respondent to break into the premises with the assistance of the OCS, Kakamega police station pending inter-partes hearing on 11th September, 2023.
13. The application is opposed through the Applicant's affidavit of 11th September, 2023 wherein he accused the Respondent of failure to obey the court orders of 16th May, 2023. On 4th August, 2023, the Applicant deposes that a scuffle arose between him and the Landlord leading to her arrest and charges of assault being preferred in terms of annexure marked "TUW-3".
14. The Applicant denies being in contempt of court and maintains in his said affidavit that his relationship with the Respondent was that of a Landlord as she subject him space in the premises. He denies being an employee as he runs a separate business.
15. On 14th September, 2023, an affidavit was filed herein which was sworn by Jimmy Owandati R.n. & Geoffrey Anami Opana on 13th September, 2023, on behalf of Ekumira Modern Stores Group which is the proprietor of Kakamega Municipality Block 1/168 as per the official search marked "EMSQ2 & 3". They deny that Ekumira Investment LTD is the proprietor of the suit premises stating that one of their officials committed a fraud so as to embezzle money and profits from proceeds of Ekumira Modern Stores Group.



16. They therefore disown one Hudson Andayi Mutende who is accused of collecting rent and harassing Tenants without knowledge of members of Ekumira Modern Stores.
17. It is the case of the two that the lease agreement in respect of the suit premises was entered into between Ekumira Modern Stores Group and Changa Multi-purpose LTD as lessee and not Rosemary Njuguna although the latter was a beneficiary of the lease. They annex a copy of official search for Changa Multi-purpose LTD.
18. The two maintain that the lessee has never sublet the property to anyone and the Applicant Timothy Uluma Wanjala was an employee of the lessee and was operating under authority and employment of the daughter in-law to the lessee one Maureen Abisaki.
19. Through an Application dated 13th September, 2023, one Hudson Mutende t/a Ekumira Investment's LTD applied to be joined in this suit as an Interested party and sought to issue a notice of termination of the tenancy between Ekumira Investment LTD and Rosemary Njuguna.
20. The said Application is opposed through the replying affidavit of Rosemary Njuguna wherein she deposes that Changa Multi-purpose Limited was the Tenant of the suit premises under a lease given by Ekumira Modern Stores Group. She denies that Ekumira Investment Limited is the Landlord thereof. She therefore denies any relationship with the latter and denies owing rent arrears to it.
21. The Respondent (Rosemary Njuguna) filed a notice of preliminary objection dated 13th September, 2023 which was argued subsequently and dismissed vide a Ruling delivered on 15th September, 2023. The Respondent was however allowed to join Ekumira Modern Stores Group as a second Interested party in this case. The matter was directed to proceed by way of viva voce evidence. All parties were directed to file their witnesses' statements and documents to be relied upon during the hearing.
22. The following witnesses' statements were filed in this matter;-
 - i. Timothy Uluma as Tenant/Applicant
 - ii. Rosemary Njuguna as Landlord/Respondent
 - iii. Maureen Abisaki as Respondent's witness
 - iv. Calvin Samuel Andati for 2nd Interested party
23. The matter proceeded to hearing on 1st February, 2024 with testimonies of Timothy Uluma (Tenant), Rosemary Njuguna (Landlord), Maureen Abisaki (Landlady's witness), and Calvin Samuel Andati Anami for 2nd Interested party. After close of the case, the parties were directed to file submissions but only the Landlord/Respondent complied.
24. The following issues arise for determination in this case;-
 - a. Whether there exists a Landlord/Tenant relationship between the Applicant and the Respondent.
 - b. Whether the Applicant is entitled to the reliefs sought in the Complaint and Application dated 11th and 10th May, 2023 respectively.
 - c. Who is the bona fide Landlord in respect of the suit premises?
 - d. Who is liable to pay costs of the suit?
25. The Tenant/Applicant adopted his witness statement as his evidence in chief in this case. He stated that he deals with phone repair services and accessories in Kakamega Town. He sued the Respondent/



- Rosemary Njuguna as his Landlord. They have no written lease agreement with Ekumira Modern Stores Group. He denied having benefited from orders issued in Kakamega CMC Misc. No E074 of 2024 filed by Ekumira Modern Stores Group despite being a party therein.
26. He stated that the premises were opened by Ekumira Modern Stores Group who partitioned it on account of the dispute between him and the Respondent and gave one portion to him as a Tenant. He therefore became a Tenant of Ekumira Modern Stores Group as a consequence of the partitioning of the premises.
 27. He however confirmed that he was brought into the premises by Rosemary Njuguna as her Tenant. He used to pay rent to her. However, Ekumira Modern Stores are the owners of the house. He had his own space and Rosemary Njuguna had space in the same premises. The latter did not tell the Applicant that the premises did not belong to her.
 28. Disputes arose between the Tenant and the Respondent which culminated into criminal proceedings and finally to this case. The head Landlord partitioned the suit premises. Police officers were present during the partitioning of the suit premises. The Respondent decided to keep away from the suit premises and the Applicant stopped paying rent to her. He used to pay her Kshs 7,500/= as rent and Kshs 2,500/= for electricity bills. The Applicant now pays rent to Ekumira Modern Stores Group.
 29. In re-examination, the Applicant stated that he had an oral tenancy agreement with the Respondent who was collecting rent from him. It is the Respondent who had given the space to the Applicant. The Respondent was in the habit of closing the suit premises and was ordered by this Tribunal to open it.
 30. In her evidence, the Respondent (Rosemary Njuguna) relied on her filed witness statement. She testified that the Applicant was her employee in charge of phone repairs. Her Landlord is Ekumira Modern Stores Group. She denied any Landlord/Tenant relationship with the Applicant. She testified that she paid Kshs 400,000/= as goodwill for the suit premises and pays Kshs 15,000/= as monthly rent.
 31. According to the Respondent, the money paid to her by the Applicant is for phone repairs and not rent. She denied that the Applicant had space in the suit premises. She alleged that the Applicant was colluding with the Landlord to remove her from the shop. She testified that they visited with the police officers and partitioned the shop during the Christmas period pursuant to orders made in Kakamega CM's Court Case No E074 of 2023.
 32. Upon cross examination, she stated that she had no employment agreement with the Applicant and that she does not pay him any salary. Instead, it is the Applicant who pays her commission of Kshs 7,500/= per month. She claimed to have employed him in 2019. The Tenant stopped paying the commission in September, 2023.
 33. The Respondent's witness one Maureen Abisaki relied on her filed witness statement. She is a daughter in-law to the Respondent who works in the suit premises. She is the one who takes out the license for the business, pays electricity bills and taxes to Kenya Revenue Authority. She testified that the Applicant is a casual worker in the shop in-charge of phone repairs. He pays commission per month for the phone repairs. He started working in the shop in 2013.
 34. When cross examined by Counsel for the Interested party, the witness stated that Changa Multi-purpose General Limited was the rightful Tenant as per the suit premises license. She works in the shop as a family member and not an employee. She denied that the Applicant had space in the said shop. He only has a table where he operates from.
 35. She further testified that the Respondent is the one who has a lease agreement with Ekumira Modern Stores Group. There was no subletting of the premises. She was not aware if the Applicant was being



- paid salary. The repair charges are shared equally between the Applicant and the owner of the shop (Respondent). She confirmed that she faced criminal charges with the Respondent in a case in which the Applicant is the Complainant.
36. One Calvin Samuel Andati Anami testified on behalf of Ekumira Modern Stores Group which owns the building housing the suit premises. He stated that he was not aware that the Applicant was a Tenant in the suit premises. He stated that the Respondent closed the suit premises on 23.12.2023 and had not approached him on the issue of re-opening. Her items were however safe in the premises.
 37. According to the witness, the Applicant entered into a new agreement with them and was paying rent to Ekumira Modern Stores Group. The space for the Respondent was still existing. The head Landlord had sought for orders for peaceful co-existence of the parties herein. The witness was aware of criminal cases between the parties.
 38. According to him, he came to learn of the Applicant's presence in the suit premises through the Respondent who confirmed to him that he was her Tenant although she had initially said he was her employee. The Applicant had shared evidence of payment of rent and a notice to vacate issued by the Respondent.
 39. In cross examination, the witness stated that there was no reference for payment of rent arrears against the Respondent neither had she been issued with any notice of termination of tenancy. She therefore remained a legal Tenant. He however confirmed that there was a tenancy agreement entered between the Applicant and Ekumira Group and that the latter recognize both parties as Tenants.
 40. He testified that he is the one who filed Kakamega CMC Misc. No E074 of 2023, against the Applicant and the Respondent seeking for orders of separation of the latter two owing to a lot of commotion in the premises. The order was served upon Kakamega police station for execution.
 41. It is clear from the foregoing evidential analysis that the Applicant entered into the suit premises with the permission of the Respondent. What is in dispute is whether he was an employee as contended by the Respondent or a subtenant as contended by him.
 42. There is no evidence that there was any employee/employer relationship between the two as the Respondent did not tender evidence of payment of any salary or wages to the Applicant neither did she produce any employment contract. Instead, the Mpesa statements produced by the Applicant showed that he was paying Kshs 7,500/= to the Respondent every month which he claimed to be rent while the Respondent claimed that it was commission for phone repairs. It is inconceivable that the owner of the suit premises could be paid commission for phone repairs by the Applicant who was described as an employee. The Respondent's narrative is not believable and we find and hold that the payments of Kshs 7,500/= per month constituted monthly rent for using a space within the suit premises.
 43. It is also clear that conflicts emerged between the Applicant and the Respondent which led to institution of this case and even criminal charges before the Kakamega Law Courts against the Respondent and her daughter in-law one Maureen Abisaki. This caught the eye of the head landlord who went ahead to file Kakamega CMC Misc. Case No E074 OF 2023 in which it was allowed to partition the suit premises in order to separate the two antagonists. The head landlord thereafter went ahead to recognize and enter into afresh agreement with the Applicant. There is no evidence tendered to show that the said orders were subsequently set aside.
 44. Although it was not within the Chief Magistrate's Court's jurisdiction to make such orders, this Tribunal has no supervisory jurisdiction over the said court and its decisions in such a matter are only amenable to being challenged in the superior courts. By reason of the said orders, the Applicant and



the head landlord have managed to change the substratum of this case to the extent that we are unable to grant the reliefs sought by the Applicant or the Respondent.

45. In the premises, we find and hold that there existed a Landlord/Tenant relationship between the Applicant and the Respondent which has since been terminated through orders issued in Kakamega CM'S Court in Misc Case No E074 of 2023 in which the suit premises was ordered to be partitioned into two and a portion thereof given to the Applicant. The said order despite having been made without jurisdiction was executed and since this Tribunal has no power or jurisdiction to sit on Appeal nor supervise the said court, the substratum of this suit has been lost and we proceed to dismiss the same.
46. Costs of every action before this Tribunal are within our discretion under Section 12(1)(k) of [Cap 301](#), Laws of Kenya but always follow the event. The failure of the case has been occasioned by the head Landlord who filed a new case in the Chief Magistrate's Court and neither the Applicant nor the Respondent are to blame for the said state of affairs. We shall order each party to meet own costs.
47. In conclusion, the following final orders commend to us in this matter; -
- a. The Applicant's Reference and Application dated 11th and 10th May, 2023 respectively are hereby dismissed.
 - b. The interim orders given in this matter are hereby discharged or set aside.
 - c. Each party shall meet own costs of the case.

It is so ordered.

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

HON. GAKUHI CHEGE - PANEL CHAIRPERSON

HON. JOYCE OSODO - PANEL MEMBER

In the presence of;

Okali for the Tenant/Applicant

Wafula for the Respondent

