



**Double Key Limited v Chill Spot Management & another (Tribunal Case E643 of 2023) [2023] KEBPRT 1130 (KLR) (15 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1130 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E643 OF 2023  
M MAKORI, MEMBER  
NOVEMBER 15, 2023**

**BETWEEN**

**DOUBLE KEY LIMITED ..... APPLICANT**

**AND**

**CHILL SPOT MANAGEMENT ..... 1<sup>ST</sup> RESPONDENT**

**MORAN AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The present claim was filed vide an application dated 14/6/2023 under Patrick Kioko Versus Josephat Ndambuki and supported by the supporting affidavit of Patrick Kioko and which application was opposed vide a replying affidavit dated 1<sup>st</sup> September 2023 deponed by Josephat Ndambuki on behalf of the Respondent/ Landlord.
2. The Tenant Josephat Ndambuki T/A Double Key Limited filed another application dated 27<sup>th</sup> June 2023 against the Landlord Patrick Kioko T/A Chill spot management and Moran auctioneers which was later amended on the 24<sup>th</sup> July 2023 and which application was opposed vide a replying affidavit and a further affidavit both dated 12<sup>th</sup> September 2023 deponed by Patrick Kioko.
3. By the order of this tribunal this cases were later consolidated with BPRT E613/2023 being regarded as the lead file.
4. The Tenants' notice of motion dated 27<sup>th</sup> June 2023 seeks the following orders;
  - a. That this application be and is hereby certified as urgent and service be dispensed with at the first instance and the same be heard ex-parte.
  - b. That the Respondent/Landlord and their agent Moran Auctioneers be and are hereby restrained from Levying distress and/or removing the proclaimed goods from Tenants business premises.



- c. That the Landlord and/or their servants and/or employees, agents Moran Auctioneers be prohibited forthwith by this court from unlawfully intercepting/harassing, intimidating pending hearing and determination of and/or evicting, closing, attaching or threatening/ interfering/tampering, disposing by hand or in any manner whatsoever and/or howsoever with the Applicants quite occupation and Lawful enjoyment of suit premises in syokimau Machakos county.
  - d. That O.C.S. Syokimau Police Station to assist in compliance of these orders.
  - e. That cost of this case be provided for.
5. The Landlords' notice of motion dated 14<sup>th</sup> July 2023 seeks the following orders;
- a. That this application be and is hereby certified as urgent and service be dispensed with at the first instance and the same be heard ex-parte.
  - b. That the Respondent/tenant be and is hereby ordered to hand over vacant possession of the suit premises at Chill spot building Syokimau to the applicant/landlord.
  - c. That the order for vacant possession be enforced by the O.C.S Syokimau police station for compliance of these orders.
  - d. That the costs of this case be provided for.
6. Parties herein confirm that there is indeed a Landlord-Tenant Relationship where the Tenant has been staying on the suit property subject to the payment of rent.
7. That parties have both conceded in their pleadings that there are rent arrears. In the landlord's application he claims to have issued a notice to terminate tenancy dated 14<sup>th</sup> March 2023 based on a defaulted rent amount of Kenya shillings 775,350 however in their replying affidavit to the tenants' application dated 12<sup>th</sup> day of September 2023 at paragraph 4(b) the landlord claims an accrued rental amount of Kshs 600,000 including other demanded arrears.
8. The tenant does not dispute the existence of the rent arrears however he claims in his response that the landlord had initially sought to distress an amount of Kenya shillings one million but in his calculations the arrears ought to be less than half of that however he does not specify the exact figure.
9. The tenant has made claims that the landlord has since proceeded to instruct Moran Auctioneers who have issued a proclamation of attachment order and who have since proclaimed the tenants' goods and have threatened to levy distress.
10. The issues that arise for determination from the above summary of the respective parties' cases are, in my humble view, the following;
- a. Whether there was closure of the Tenant's business premises and if so if the same was unlawful and contrary to the provisions of Cap 301 of the Laws of Kenya.**
11. The tenant in his supporting affidavit of the amended application dated 24<sup>th</sup> July 2023 makes a claim that the premises were at a certain point locked up subsequent to disconnecting the electricity and proclamation done in his absence. The same was opposed by the landlord in his replying affidavit.
  12. In making the claim the tenant does not specify the dates in which the purported closure was made nor does he file any documentary evidence to show that indeed the closure occurred.



13. From the above averments it would be impossible to grant orders restraining the landlord from claiming rent from the date of closure and as such the said claim is dismissed.

**b. Whether the Landlord ought to be enjoined from interfering with the Tenant's business.**

14. In dealing with this prayer it is important to establish whether due procedure in making the rental arrears claim has been established.
15. This is guided under Section 4(2) of [Cap 301](#) which is in the following terms;
- “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.”
16. The landlord in making his application has indeed shown that on the 14<sup>th</sup> of March 2023 he issued a notice which ought to have taken effect from the 1<sup>st</sup> of June 2023 on the ground of non-payment of rent amounting to Kenya shillings seven hundred and seventy five thousand three hundred and fifty thousand (Ksh 775,350).
17. The tenant did not file a reference against the said notice, the same was confirmed vide a letter dated 13<sup>th</sup> June 2023 from the chairman of the business premises rent tribunal.
18. Based on the said averments it is established that indeed due procedure was followed in terminating or altering the terms of tenancy.

**c. Whether the Landlord ought to be enjoined from levying distress against the Tenant.**

19. Having established that due procedure was followed it would be prejudicial to the landlord to issue orders barring him from enjoying his rental gains.
20. The same has been explained in several determinations including the case of; -

Julius Mogaka Gekonde T/A E-Smart Technical College Vs Ouru Power Limited and Joseph O Nyachoti T/A Minimaz Auctioneers, the court in dealing with a similar scenario stated;

74 – “I find that once the Plaintiff has acknowledged that he is indeed in arrears of rent, it means that he is in breach of the most critical term of their tenancy agreement and being a defaulting party, he cannot be seen to approach the court for an order of injunction which is an equitable relief/remedy only available to parties who come to court with clean hands.”

75 – “I am not convinced that the Applicant/Plaintiff has established that he has a prima facie case against the Defendants with high chances of success due to his default of rent. The principles for the grant of orders of interim injunction were well stated in the case of Giella Vs Cassman Brown & Co Ltd [1973] EA 358.”

**d. What are the appropriate orders to grant in the circumstances of this case?**

21. The upshot is that the applications and references are allowed and dismissed on the following terms: -
- i. That the Landlord is entitled to the rent arrears amounting to Kenya shillings six hundred and Ninety thousand (690,000) being Six hundred thousand (600,000) claimed as at September and Ninety thousand (90,000) being October and November rent.



- ii. That the Landlord is at liberty to follow the laid down procedure to recover the rent arrears from the Tenant.
- iii. The landlord's application dated 14<sup>th</sup> June 2023 is allowed in terms of prayers 2 and 3
- iv. That the Tenant's reference and application dated 27<sup>th</sup> June 2023 is dismissed.
- v. Each party shall bear their own costs

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15<sup>TH</sup> DAY OF NOVEMBER, 2023**

**HON. MIKE MAKORI**

**MEMBER**

**11.2023**

**DELIVERED IN THE ABSENCE OF THE PARTIES**

