



**Manaseh Raymond t/a Sylish Grill Lounge & Grill v Zameta Holding Ltd & another
(Tribunal Case E023 of 2024) [2024] KEBPRT 1604 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1604 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E023 OF 2024
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
NOVEMBER 22, 2024**

BETWEEN

MANASEH RAYMOND T/A SYLISH GRILL LOUNGE & GRILL ... APPLICANT

AND

ZAMETA HOLDING LTD 1ST RESPONDENT

MOCO AUCTIONEERS 2ND RESPONDENT

RULING

A. Dispute Background

1. The tenant/applicant moved this Tribunal vide a motion dated 15th July 2024 seeking that this court be pleased to set aside its orders of 15th July, 2024 dismissing the Applicant's applications dated 18th April 2024 and 23rd April 2024 for non-attendance. Secondly, he seeks that the application/suit be reinstated for hearing and determination on merit.
2. This suit was listed for hearing on 15th July 2024 when the Applicant's Counsel logged in to the court session using the usual court link (<https://tinyurl.com/2wevees9>) and was ready to proceed with the hearing. The said link was procured from the Judiciary cause list portal that had listed the same for 15th July 2024 after it was mentioned on 21st June 2024.
3. Unknown to Counsel, there was another login link which was different from the one he used. Upon receiving notification of dismissal and further inquiry, Counsel noted that the link found in the Judiciary cause list portal was not the right one and that the one in the Kenya Law Report cause list was the correct one. The errors emanated from the judiciary system which could not have been known to the Applicant.
4. According to the Applicant, this Honourable court has wide and unfettered discretion to set aside orders when justice so demands. The Applicant is bound to suffer irreparable damage unless the



dismissal order herein is set aside as he would be condemned unheard contrary to the rules of natural justice.

5. Conversely, the Respondents will suffer no prejudice beyond the scope of costs, if the matter herein is reinstated for hearing and determination on merit.
6. The application is supported by the affidavit of the Applicant sworn on 15th June 2024 wherein the same facts are repeated and the impugned cause list attached as annexure “MR 1’a”.
7. The application is opposed by the 1st Respondent through a replying affidavit sworn on 13th September 2024 by Jephnei Nyakwana Orina wherein it is attacked as being frivolous, vexatious, bad in law and an abuse of the court process.
8. It is further deposed that the Applicant has been attending court on several occasions using the normal court link and cannot use the excuse of having used the wrong link to justify his non-attendance on 15/07/2024.
9. The 1st Respondent has since issued and served the Applicant/Tenant with a termination notice dated 14th JUNE 2024 attached as annexure “ZH-1”. According to the 1st Respondent, upon the termination notice being received, there is no tenancy relationship between the Landlord and the Applicant, hence making the matter herein untenable.
10. It is further deposed that the rent arrears are not disputed and the Landlord has a right to recover the same. The 1st Respondent seeks for dismissal of the application.
11. The Applicant filed a supplementary affidavit sworn on 17th September 2024 wherein he repeats the depositions made in the supporting affidavit.
12. The application was directed to be disposed of by way of written submissions but only the tenant complied. The tenant’s submissions are dated 18th October 2024.

Issues for determination

13. The following issues arise for determination; -
 - a. Whether the tenant is entitled to the reliefs sought in the application dated 15th July 2024.
 - b. Who shall bear the costs of the application?

Issue (a) Whether the tenant is entitled to the reliefs sought in the application dated 15th July 2024.

14. The tenant/applicant has moved this Tribunal vide a motion dated 15th July 2024 seeking that this court be pleased to set aside the orders of 15th July, 2024 dismissing his application for non-attendance. Secondly, he seeks that the application/suit be reinstated for hearing and determination on merit.
15. This suit was listed for hearing on 15th July 2024 when the Applicant’s Counsel logged into the session using the usual court link (<https://tinyurl.com/2wevees9>) and he was ready to proceed with the hearing. The said link was procured from the Judiciary cause list portal that had listed the same for 15th July 2024 after it was mentioned on 21st June 2024.
16. Unknown to Counsel, there was another login link which was a different from the one he used. Upon receiving notification of the dismissal and further inquiry, Counsel noted that the link found in the Judiciary cause list was not the right one and that the one in the Kenya Law Report cause list was the correct one. The errors emanated from the judiciary system which could not have been known to the Applicant.



17. According to the Applicant, his Honourable court has wide and unfettered discretion to set aside orders when justice so demands. The Applicant is bound to suffer irreparable damage unless the dismissal order herein is set aside as he would be condemned unheard contrary to the rules of natural justice.
18. The application is opposed by the 1st Respondent through a replying affidavit sworn on 13th September 2024 by JEphnei Nyakwana Orina wherein it attacked as being frivolous, vexatious, bad in law and an abuse of the court process.
19. It is further deposed that the Applicant has been attending court on several occasions using the normal court link and cannot use the excuse of having used the wrong link to justify his non-attendance on 15/07/2024.
20. The 1st Respondent issued and served the Applicant/Tenant with a termination notice dated 14th June 2024 attached to the supporting affidavit as annexure “ZH-1”. According to the 1st Respondent, upon the termination notice being received, there is no tenancy relationship between the Landlord and the Applicant, hence making the matter herein untenable.
21. Section 12(1)(i) of Cap 301 gives this Tribunal power: -

“ (i) to vary or rescind any order made by the Tribunal under the provisions of this Act.”
22. We have looked at the cause list posted on the Judiciary cause portal and the one posted on the Kenya Law website and noted that they provided different links for the trial court. This is a problem which was prevalent at the time when the matter was coming up for hearing on account of the fact that this Tribunal sits as a twin court with the two members being assigned different links. The said situation had caused a lot of confusion to litigants at the time since there was no way of knowing which link to use while joining the court.
23. It is therefore a reasonable explanation that Counsel for the Applicant used a different link from the one used by the Tribunal on the date when this matter was dismissed. We shall therefore use our discretion in favour of the Applicant and set aside the impugned dismissal orders.

Issue (b) Who shall bear the costs of the application?

24. As regards costs, the same are in the Tribunal’s discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall order the costs of the application to abide the outcome of the main reference.

a. Orders

25. In view of the above analysis, the orders which commend to us are;
 - a. The tenant’s application dated 15th July 2024 is allowed in terms of Prayers 2 & 3 thereof.
 - b. The costs of the application shall abide the outcome of the main reference.
- It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND NOVEMBER 2024

HON. GAKUHI CHEGE

(PANEL CHAIRPERSON)



BUSINESS PREMISES RENT TRIBUNAL

HON. JOYCE AKINYI OSODO

MEMBER

In the presence of: Cheruiyot for Tenant

Maroko for the Landlord

