



**Kanini v Musango & another (Tribunal Case E125 of 2024)  
[2024] KEBPRT 681 (KLR) (5 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 681 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E125 OF 2024  
CN MUGAMBI, CHAIR  
APRIL 5, 2024**

**BETWEEN**

**NORAH KANINI ..... APPLICANT**

**AND**

**MARGARET MUSANGO ..... 1<sup>ST</sup> RESPONDENT**

**CHRISPUS NDOLI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Tenant in this matter has filed two Applications dated 24.1.2024 and 3.2.2024 respectively.
2. In the Application dated 24.1.2024, the Tenant seeks orders of injunction restraining the Respondent from evicting the Tenant and an order compelling the Respondent to allow the Tenant to continue with her business without interference pending the hearing of the suit. The tenant has also sought the assistance of the OCS, Syokimau police station in ensuring compliance with the court orders sought.
3. In the Application dated 3.2.2024, the Tenant seeks an order compelling the Respondent to re-open the suit premises and to refrain from any arbitrary closures of the same. The Tenant has also sought an order directing the Respondent to compensate her for losses incurred as a result of the alleged unlawful closure of the business premises amounting to Kshs. 12,000/=.

**The Tenant's depositions**

4. The affidavits of the Tenant sworn on 24.1.2024 and 3.2.2024 in respective support of both Applications may be summarized as follows:-
  - a. That on 24.1.2024 the Respondent served the Tenant with a notice directing the Tenant to vacate the premises on or before 31.1.2024.



- b. That if the Tenant is forced to vacate without due legal process, her economic wellbeing will be threatened.
- c. That the Tenant who pays a monthly rent of Kshs. 15,000/= had no rent arrears as at January, 2024.
- d. That there is no justification to warrant the eviction notice issued by the Respondent.
- e. That on 2.2.2024, a licensed court process server duly served the Respondent with the pleadings herein.
- f. That on 3.2.2024, the Respondent locked the Tenant's business premises, the suit premises herein.
- g. That despite the Tenant having fully paid her rent, the Respondent has in disregard of the Tenant's tenancy rights, locked the suit premises causing the Tenant to incur losses amounting to Kshs. 12,000/=.

### **The Respondent's depositions**

5. The Respondent's affidavits sworn on 5.2.2024 and 15.2.2024 in reply to the affidavits sworn by the Tenant in support of her Applications may be summarized as follows;-
  - a. That as per the lease agreement, the Tenant was to carry out the business of assorted juices and uji power.
  - b. That the Tenant, without the consent of the Respondent changed the business to one of cooking and selling cereals.
  - c. That the agreed monthly rent excluding utilities was Kshs. 13,000/=.
  - d. That as at January, 2024, the Tenant had rent arrears of Kshs. 10,917/=.
  - e. That the Tenant has not been paying for the utilities save for the garbage collection fees of Kshs. 250/=.
  - f. That the Tenant has engaged in activities with third parties that interfere with the landlord's and Tenants quiet possession and use of the premises.
  - g. That the tenancy between the parties ended on 31.1.2024 upon the expiry of the notice period and therefore there is no existing landlord Tenant relationship and therefore the Tribunal has no jurisdiction to hear and determine this dispute.
  - h. That the Tenant has not filed a Reference in opposition to the notice to terminate her tenancy and neither has she informed the Respondent that she does not wish to comply with the notice as required by law.
  - i. That the Respondent's lease over the suit premises expires on 31.12.2024.
  - j. That the notice to the Tenant was issued on 6.1.2024 and not 24<sup>th</sup> January, 2024.
  - k. That the Tenant being in rent arrears, she is in breach of the most critical term of the lease agreement and is therefore not entitled to the reliefs she has sought.
  - l. That the Tribunal did not issue any of the orders sought by the Tenant in her Application dated 24.1.2024.



- m. That the Respondent has not locked the Tenant's premises as alleged.
- n. That the Tenant is still in rent arrears of Kshs. 10,917/= and has further not paid the rent for the month of February, 2024.
- o. That the Tenant has not suffered any financial loss as alleged and if she has suffered any losses, then the same cannot be attributed to the Respondent who has never locked the Tenant's business premises.
- p. That the premises are available for the Tenant's occupation but the Tenant should not be allowed quiet possession on account of her non payment of rent.
- q. That the Tenant ought to be ordered to clear the rent arrears failing which she should be ordered to vacate the suit premises.

### **Analysis and determination**

- 6. The issues that arise for determination in this Application are in my view the following;-
  - a. Whether the Tribunal has the jurisdiction the jurisdiction to hear and determine this matter.
  - b. Whether the Tenant is entitled to the orders sought in her Application dated 24.1.2024 and 3.2.2024.

Issue A: Whether the Tribunal has the jurisdiction the jurisdiction to hear and determine this matter

- 7. Although the Tenant has deponed in her affidavit sworn on 24.1.2024 that the Respondent served her with a notice directing her to vacate the suit premises on or before 31.1.2024, the Tenant has not annexed the said notice to the affidavit and neither has she filed it anywhere else in these pleadings. And although even the Respondent has stated that the Tenant was served with the notice on 6.1.2024 and not 24.1.2024, the Respondent has also not annexed the said notice to her affidavit. I however note that at paragraph 15 of the Respondent's affidavit sworn on 5.2.2024, the Respondent denies the jurisdiction of the Tribunal on the basis that the Tenancy agreement ended on 31.1.2024. If the notice was indeed issued on 6.1.2024 as deponed to at paragraph 20 of the same affidavit, then even without the benefit of seeing the said notice, it could only have been defective as it gave the Tenant only twenty five (25) days to vacate the premises. In the circumstances, the alleged expiry of the purported notice cannot be a basis of denying the Tribunal the jurisdiction to hear and determine this matter.
- 8. Both parties have not annexed a copy of the lease agreement between them, if any exists at all. In the circumstances, the relationship between them is as far as I can determine, governed by a lease which has not been reduced into writing. Consequently, their tenancy answers to the meaning of a controlled tenancy as defined under Section 2(1) of Cap 301. Consequently, I do find that the Tribunal has the jurisdiction to hear and determine this dispute.

Issue B: Whether the Tenant is entitled to the orders sought in her Application dated 24.1.2024 and 3.2.2024

- 9. The Tenant seeks the equitable relief of injunction in both her Applications. The Tenant has also sought an order that she be compensated for the losses she incurred during the time the landlord had closed her premises.

On the issue of the prayer for injunction, it is trite law that he who comes to equity must come with clean hands. Has the Tenant approached this court of equity with clean hands?



Although the Tenant has in both affidavits deposed that he does not owe the landlord any rent, the Respondent has at paragraph 8 of her affidavit sworn on 24.1.2024, clearly set out the rent payments. According to the Respondent, the Tenant is in arrears of rent amounting to Kshs. 10,917/= as at January, 2024 and in the affidavit sworn by the Respondent on 15.2.2024, the Respondent has further deposed that the rent for the month of February, 2024 had not been paid.

10. It is the duty of the Tenant to pay rent as and when it falls due. I agree with the Respondent that the Tenant in this case, having fallen into rent arrears is not deserving of the equitable relief of injunction.
11. The Tenant's prayer for compensation for lost business is not supported by any evidence. I am unable to grant the same and especially in circumstances where the Respondent has also denied closing the Tenant's business premises.
12. I do also note that the Landlord has requested that the Tenant clears the rent arrears in two weeks or be ordered to vacate the premises. The orders for vacation of the premises cannot be granted as they would amount to a termination of the tenancy without adhering to the strict provisions of Section 4 of Cap 301 in regard to notices to terminate or alter terms of controlled tenancies.

### **Disposition**

13. The orders which commend themselves to me and which I hereby make are the following:-
  - a. That the Tenant's Application for injunction is dismissed.
  - b. That the Tenant will clear the rent arrears failing which the Respondent will be at liberty to levy distress for rent using a licensed auctioneer.
  - c. The Tenant's prayer for compensation for losses allegedly incurred during the closure of the premises is dismissed.
  - d. For clarity, the Tenant is not to be evicted from the suit premises save under and in conformity with the provisions of Section 4 of Cap 301 of the Laws of Kenya.
  - e. The Tenant will bear the costs of the Application.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5<sup>TH</sup> DAY OF APRIL, 2024.**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the absence of the parties.

