



**Winerack (Sailors) v New Realite Limited & 3 others (Tribunal Case
1001 of 2019) [2024] KEBPRT 558 (KLR) (3 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 558 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 1001 OF 2019
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
MAY 3, 2024**

BETWEEN

WINERACK (SAILORS) TENANT

AND

NEW REALITE LIMITED 1ST RESPONDENT

KENYA CARGO HANDLING SERVICES LIMITED 2ND RESPONDENT

HAKI TRADERS AUCTIONEERS 3RD RESPONDENT

CHARLES MWANGI KAMANDE T/A CHAKA & CO.

AUCTIONEERS 4TH RESPONDENT

RULING

1. The Tenant/Applicant moved this Tribunal through a motion dated 13th December 2023 seeking in pertinent part for restraining orders against the Respondents from evicting and/or trespassing on the premises known as L.R No. 209/378/10, Hurlingham Court. It also seeks for an order directing the 1st Respondent to renew the lease under the same terms and that the lease dated 26th February 2018 be enforced.
2. The application is predicated upon the supporting affidavit of John Kingori and the grounds on the face of the application. The tenant has set out the following grounds in support of the application;
 - i. That the 1st Respondent vide a letter dated 11th July 2023 has indicated its express intention of not renewing the Tenant/Applicant's lease on L.R No.209/378/10, Hurlingham Court.
 - ii. That the 1st Respondent is acting under the instructions of the 2nd Respondent who is the Landlord of the premises.



- iii. That the act of disallowing the Tenant/Applicant the right to renew the lease dated 26th February 2018 is in bad faith since the said lease provides for renewal as per clause 21 - standard lease.
 - iv. That the attempt of not renewing the Tenant/Applicant's lease is aimed at defeating justice since the Tenant/Applicant has sued all the Respondents in the present suit in Nairobi BPRT No. 1001 of 2019 and the said suit was earmarked for mention on 1st February 2024 to confirm filing of a consent.
 - v. That in the premises, the Tenant/Applicant is yet to fully enjoy the six (6) year renewable term of the lease since the 1st and 2nd Respondents had locked the premises for a period of more than twelve (12) months and proceeded to attach its goods illegally with the help of the 3rd and 4th Respondents.
 - vi. That the 1st and 2nd Respondents' attempt at denying the Tenant/Applicant the right to renew the lease is a grand scheme aimed at defeating the purpose of the present suit which is yet to be fully determined by this Tribunal.
 - vii. That it is in the wider interest of justice that the orders sought be granted so as to immediately put a stop to the unfair actions of the Respondents.
3. In his supporting affidavit sworn on 13th December 2023 by John Kingori on behalf of the Tenant/Applicant, he deposes that he entered into a lease with the 2nd Respondent in respect of its property known as L.R No. 209/378/10, Hurlingham Court which is dated 26th February 2018.
 4. Clause 21 of the standard lease specifically provided for the renewal of the lease as follows:

“The lease shall be renewable on expiry for further six (6) years on terms agreed by both parties; landlord/tenant. A copy of the standard, which includes all of the terms referred to in this letter and the standard clauses set out therein and which shall be deemed to have been accepted.”
 5. The Tenant deposes that he entered into the relationship of Landlord and Tenant for the premises due to the wording of Clause 21 of the aforesaid lease.
 6. That in the course of conducting business, the Covid-19 pandemic kicked in which caused challenges for the Tenant/Applicant in terms of rent payments. Due to these unforeseen circumstances, the Tenant wrote to the 1st Respondent seeking rent waiver. A letter dated 1st July 2020 is annexed to the affidavit.
 7. The Tenant further deposes that he did not enjoy the lease due to the unexpected Covid-19 pandemic and forced closure of his business due to government directives despite the fact that he had loans to repay without any other sources of income save for the business situated on the suit premises.
 8. The 1st Respondent ignored the said request and proceeded to lock the premises and attach the Tenant's /Applicant's goods. As a result, the Tenant filed the present suit and was issued with orders which the Respondents have jointly and severally refused to comply with. A copy of the order dated 29th January 2024 is annexed.
 9. The 1st Respondent wrote a letter to the Tenant/Applicant expressing its intention not to renew the current lease upon its expiry on 31st December 2023 which is contrary to the provisions of Clause 21 of the lease. A copy of the letter dated 11th July 2023 is annexed to the affidavit. Upon receiving the



- aforementioned letter, the Tenant wrote to the 1st Respondent seeking renewal of the lease while giving valid reasons for its renewal among them the Covid-19 pandemic which forced closure of the business.
10. According to the Tenant, it was yet to fully enjoy the six (6) year renewable term of the lease since the 1st and 2nd Respondents had locked the premises for a period of more than twelve (12) months and proceeded to attach its goods illegally with the help of the 3rd and 4th Respondents. The attempt at denying the Tenant/Applicant the right to renew the lease is a grand scheme aimed at defeating the purpose of the present suit which is yet to be fully determined by this Tribunal.
 11. That if the orders sought herein are not granted, the Tenant will suffer irreparable loss and damage and it is in the interest of justice that the orders sought in the application be granted.
 12. We are required to determine the following issues;
 - a. Whether the reliefs sought in the Tenant's application dated 13th December 2023 ought to be granted.
 - b. Who is liable to pay costs?
 13. We note that the Respondents were served with the application as evidenced by the affidavit of service of Urbanus Kioko Musyoka sworn on 16th January 2024 filed herein. On 17th January 2024, one Mrs Kinyanjui appeared for the 1st and 2nd Respondents and sought for 21 days to file a response to the said application. The application was granted and the matter was therefore slated for mention on 11th March 2024. Parties were also directed to file their written submissions together with any further affidavits. By the time of writing this ruling, there was no response on record in respect of the said application. The tenant's Counsel in addition filed submissions dated 11th March 2024 in support of the application pointing out that the application was unopposed.
 14. It is therefore clear that despite the Respondents having been granted an opportunity to oppose the said application, there was no response filed thereto and the same is unopposed and therefore for allowing.
 15. In regard to costs, the same are at our discretion under Section 12(1)(k) of Cap. 301 but always follow the event unless for good reasons otherwise ordered. We have no reason to deny costs to the Tenant being the successful party.
 16. In conclusion, the following orders commend to us in this matter;
 - a. The Tenant's application dated 13th December 2023 is hereby allowed in terms of prayers 2, 3 and 4 pending hearing and determination of the reference on the merits.
 - b. The parties are directed to comply with Order 11 of the Civil Procedure Rules, 2010 within the next Thirty (30) days hereof by filing and exchanging witnesses' statements, list and copies of their respective bundles of documents which should be indexed and paginated for ease of reference.
 - c. The matter shall be mentioned on 3rd day of June 2024 to confirm compliance and fixing of a hearing date.

RULING DATED, SIGNED & DELIVERED THIS 3RD DAY OF MAY 2024

HON GAKUHI CHEGE

PANEL CHAIRPERSON

HON JOYCE OSODO



PANEL MEMBER

In the absence of Parties

