



**Mbunga & another v Mbogo & another (Tribunal Case E1003 of 2023)  
[2024] KEBPRT 676 (KLR) (Civ) (24 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 676 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E1003 OF 2023  
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER  
MAY 24, 2024**

**BETWEEN**

**EDGER EDSON MBUNGA ..... 1<sup>ST</sup> TENANT**

**NANCY GITHU ..... 2<sup>ND</sup> TENANT**

**AND**

**ROSE MUTITU MBOGO ..... LANDLORD**

**AND**

**TITUS MAISIBA GESAKA ..... AGENT**

**RULING**

1. The tenants/applicants moved this tribunal vide a reference under Section 12 (4) of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act Cap 301 dated 11<sup>th</sup> October, 2023 in which he complained that the landlord has changed the terms of the tenancy without due regard to the previous agreement in place and intended to enforce unlawful eviction against them from the suit premises.
2. The applicants filed a Notice of Motion under a Certificate of Urgency dated 11<sup>th</sup> October, 2023 which was allowed by this tribunal in the ruling dated 2<sup>nd</sup> February, 2024.
3. In the said ruling, the court issued orders that both parties file and exchange rent account statements and evidence of rent payment for purposes of determining the rent arrears owing by the tenants.
4. Both parties filed their rent account statements with the tenants/applicants filing theirs dated 8<sup>th</sup> April, 2024 and the respondents filing theirs dated 9<sup>th</sup> May, 2024. We shall consider both documents as we deal with the issues for determination.



## **B. Issues for Determination**

5. The following are the issues for determination; -
  - a. How much rent arrears are owed by the tenants/applicants?
  - b. Who shall bear the costs of the application?

### **Issue (a) How much rent arrears are owed by the tenants/applicants?**

6. The tenants herein have not denied that they have rent arrears owed to the landlord. According to the tenants' rent account statements dated 8<sup>th</sup> April, 2024, it is indicated that they owe the respondents KES. 184,500.
7. We note that the tenants/applicants in their tabulations from January 2023 to October 2023 have indicated that rent payment was supposed to be KES. 60,000 instead of the agreed monthly rent of KES. 50,000. This tribunal will use the agreed rent of KES. 50,000 in its calculations.
8. We also note that the tenants in their supporting affidavit dated 11<sup>th</sup> October, 2023 swore that on 8<sup>th</sup> August, 2023 the landlord disconnected electricity from the suit premises causing the business to be un-operational for the months of August, September, October, November and December of 2023. This is evident from the lack of rent payment for the said months in both statements of rent accounts filed by both parties.
9. A court order issued on 13<sup>th</sup> October, 2023 had directed that the respondents reconnect electricity at the suit premises. However, as at the date of filing of the tenant's further affidavit on 30<sup>th</sup> November, 2023, the landlord was still in contempt of the said court orders. The respondents have not denied the said allegations. Therefore, we find that the tenant is deserving of a waiver for the months when there was no electricity connection at the suit premises as the business was not operational.
10. The landlord on the other hand, according to his rent account statements dated 9<sup>th</sup> May, 2024 has indicated that the tenant is in rent arrears of KES. 353,500 as at March 2024.
11. We note that the landlord in his tabulation has indicated a monthly rent of KES. 60,000 from March 2023 to December 2023 instead of the agreed amount of KES. 50,000.
12. Upon analysis of both statements of rent accounts including the evidence of rent payment submitted by the tenant/applicant, we are satisfied with the tenant's admitted rent arrears of KES. 184,500 and shall order that the tenant pays the said rent arrears to the landlord herein.

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

13. Costs of every action before the Tribunal are in its discretion under Section 12(1)(k) of Cap. 301, Laws of Kenya but always follow the event unless for good reasons otherwise ordered. We have no reason to deny costs to the tenants/applicants.

## **C. Order**

14. In conclusion, the following final orders commend to us; -
  - a. The tenants shall pay the 1<sup>st</sup> respondent/landlord the admitted amount of KES. 184,500 within the next 30 days, failure to which the landlord is at liberty to levy distress against the tenants in recovery of the said rent arrears.
  - b. Costs of KES. 40,000 is awarded to the tenants to be waived against the rent account.



It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH DAY OF MAY 2024.**

**HON. JOYCE AKINYI OSODO**

**(PANEL CHAIRPERSON)**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON GAKUHI CHEGE**

**(PANEL MEMBER)**

**In the presence of:**

**Gitahi for the tenant/applicant**

**No appearance for the respondents**

