



**Dhingra t/a Green Valley International School v Kimiti (Tribunal Case  
E1247 of 2023) [2024] KEBPRT 1001 (KLR) (Civ) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1001 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E1247 OF 2023  
CN MUGAMBI, CHAIR  
JULY 11, 2024**

**BETWEEN**

**RAMESH C DHINGRA T/A GREEN VALLEY INTERNATIONAL  
SCHOOL ..... TENANT**

**AND**

**CHRISTOPHER W KIMITI ..... LANDLORD**

**RULING**

1. The Tenant's Application dated 16.04.2024 seeks the following orders;-
  - a. That the Respondents be restrained from levying distress for rent against the Applicant while the Reference is still pending.
  - b. That the proclamation of attachment for distress herein be declared as null and void.
  - c. That the Landlord/Respondent be ordered to re-open the parts of the suit premises that he has locked and also remove the guards posted at the suit premises pending the hearing and determination of the suit herein.
  - d. That the Tribunal do appoint an assessor to determine the portions of the premises taken over by the landlord and the portion occupied by the Tenant and thereby determine the rent payable by the Tenant.
  - e. That the Landlord compensates or refunds to the Tenant the excess rent paid by the Tenant for the premises not utilized by the Tenant/Applicant plus the amounts paid for electricity for the portions not utilized by the Applicant and damages for unlawful acts.



- f. That the Starstruck Auctioneers be restrained from taking away the Tenant's proclaimed goods from the suit premises.
- g. Costs.

### **The Tenant's depositions**

2. The Tenant's Affidavit in support of the Application may be summarized as follows:-

- a. That the Tenant runs a school called Green Valley International School at the suit premises.
- b. That following the expiry of the lease agreement between the parties, the Tenant continued to pay the rent of Kshs. 100,000/=.
- c. That the Landlord forcefully took over some portions of the suit premises thereby causing disruptions in the school leading to the loss of a huge number of students.
- d. That despite the disruption, the Landlord continued to demand for the payment of the rent for the whole premises and which rent the Tenant dutifully paid. The Tenant has also been paying for electricity and other utilities for the entire premises.
- e. That on 29.06.2023, the Landlord wrote a letter to the Tenant requiring him to vacate the premises by 15.12.2023 but the letter was only served upon the Tenant in November 2023, the Tenant then filed the instant Reference.
- f. That while the Reference was still pending, the Landlord instructed Starstruck Auctioneers to distress for rent for the months of February and March, 2024 and the said auctioneers went ahead and proclaimed the Tenant's goods on a Sunday which is an excluded day for attachment.
- g. That the Tenant has continued to pay the monthly rent of Kshs. 100,000/= together with electricity and utility bills for the entire premises.

### **The Landlord's depositions**

3. The Landlord's Replying affidavit may be summarized as follows:-

- a. That upon the expiry of the lease in 2019, the Tenant indicated his willingness to vacate the premises as he had been unable to pay the rent of Kshs. 180,000/= which had been reviewed downwards to Kshs. 100,000/= until the end of 2019 when the Tenant would vacate.
- b. That it is absurd for the Tenant to allege that any of the Landlord's actions was the cause of the Tenant losing students.
- c. That due to the problems the Tenant was having with the tenancy and also due to the effects of Covid 19, it was mutually agreed that part of the suit premises would revert to the Landlord for his own use.
- d. That the Tenant has been avoiding getting into any written lease with the Landlord.
- e. That when the Tenant became evasive and unwilling to renew the lease, the Landlord served him with a notice to vacate in June, 2023 to enable the Landlord get another Tenant for the suit premises.



- f. That at the time the Landlord instructed auctioneers to levy distress for rent, the Tenant was in rent arrears for two months but the Tenant cleared the arrears and the Auctioneers therefore never removed any movable properties from the premises.
- g. That the Tenant continues to pay rent of Kshs. 100,000/= instead of Kshs. 180,000/= and has refused to agree on commensurate rent for the part of the premises he is currently occupying.
- h. That the Applicant has only been receiving bills for the part of the premises he occupies which bills he has not been paying and has accumulated in the sum of Kshs. 188,823/=. The remaining part of the premises have separate electricity meters.
- i. That Counsel for the Tenant had written to the Landlord's Advocates and sought for time to make arrangements to vacate the suit premises after first term 2024 which request was granted.

### Analysis and determination

4. The issue that arises for determination in this Application is whether the Tenant/Applicant is entitled to the orders sought in his Application.
  5. It is a commonly held ground that the lease between the parties expired in or about the year 2019. Thereafter, the Landlord accommodated the Tenant and continued to receive rent from the Tenant. The relationship that evolved after the expiry of the lease in the year 2021 is therefore a controlled tenancy and governed by the provisions of Cap 301 of the Laws of Kenya.
  6. The Tenant has deponed in his affidavit that after the expiry of the lease, he continued to pay rent at the rate of Kshs. 100,000/= "as usual". I have however noted from the lease that although the Tenant does not disclose the rent payable under the expired lease, the rent payable under that lease was Kshs. 180,000/= at its expiry. The payment of Kshs. 100,000/= was in agreement with the email of 08.11.2019 addressed to the Tenant by the Landlord where the Landlord stated, "We have accepted your short lease for Kshs. 100,000/= per month due to the relationship we have had."
- It is therefore clear that the rent was reduced to Kshs. 100,000/= from Kshs. 180,000/=.
7. The instant dispute is not so much about rent arrears as the Landlord admits that the rent arrears for which they had issued instructions to the auctioneers to levy distress was fully paid at the expiry of the proclamation period.
  8. The dispute as I understand it revolves around the Landlord's notice to vacate dated 29.06.2023. I have seen the said notice and it does not amount to a notice to terminate tenancy as provided for under Section 4(2) of Cap 301. The said Section provides as follows:-

"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."

The prescribed form is FormA [Rule 4 (1)] in the schedule to the Act. The notice to vacate by the Landlord dated 29.06.2023 is not in the mandatory form required under the Act and is therefore invalid and of no effect.

9. In the case of; *Lall v Jeypee Investments Limited* [1972] EA 572, the court while dealing with the strict Application of the provisions of Cap 301, held as follows:-

"The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* is a specifically enacted piece of legislation which creates a privileged class of tenants for the purpose



of affording them the protection specified by the provisions against ravages of predator landlords. Such protection can only be fairly enjoyed if the provisions of the Act are observed to the latter otherwise the clearly indicated intention of the legislative would be defeated.

In order to be effective in this fashion the Act must be construed strictly no matter how harsh the result... The Landlord and Tenant Act laid down a code which Parliament intended to be followed and if a Landlord does not give notice of termination as prescribed, the notice will be ineffective. This may serve a technical and unmeritorious defence but there is no doubt that the court has no power to dispense with these time limits if the defendant chooses to object at the proper time. This is an Act which requires in so far as the giving of notice is concerned, absolute and complete not merely substantive compliance with its preemptory provisions.”

10. The Tenant has invited the Tribunal to inspect the premises and determine the portion that the Landlord took away against the portion that the Tenant occupies and to determine the rent payable by the Tenant. I have already observed that the rent payable at the expiry of the lease was Kshs. 180,000/= . The same was brought down to Kshs. 100,000/= in what to me seems to be a mutual agreement between the parties. The rent was reduced at the request of the Tenant contained in his letter of 25.10.2019 and the terms confirmed by the Landlord’s email of 8.11.2019. I do not therefore find any basis upon which the Tenant seeks for an inspection of the premises to determine the rent payable.
11. Further, if the Tenant was desirous of having a reassessment of the rent, then he was obligated to comply with the provisions of Section 4(3) of Cap 301 which provides as follows;-

“A tenant who wishes to obtain a reassessment of the rent of a controlled tenancy or the alteration of any term or condition in or of any right or service enjoyed by him under such a tenancy shall give notice in that behalf to the landlord on the prescribed form.”

The Tenant cannot therefore achieve this objective by way of a notice of motion as he has sought to do in the instant case.

12. The Tenant has also sought for orders that the Landlord compensates him for the amounts paid for electricity consumption and other utilities over the parts of the premises already occupied by the Landlord forcefully and unilaterally. Besides this prayer lacking in particularity, I also note that in response thereto, the Landlord deponed that the Tenant only receives electricity bills for the part of the premises he occupies as the remaining part of the premises are served by a separate meter number 14420257769. In the circumstances, I do not think there is any merits in this prayer.
13. In the circumstances, I will allow the Tenant’s Application in the following terms;-
  - a. That the proclamation of attachment for distress for rent served by Starstruck Auctioneers on 24.3.2024 is hereby set aside.
  - b. That the Landlord is ordered to reopen all the parts and portions of the suit premises which he has locked and where the Tenant/Applicant occupies and also to remove the guards posted on the said premises.
  - c. That Starstruck Auctioneers are hereby restrained from in any manner illegally interfering with the Tenant’s quiet use and enjoyment of the suit premises.
  - d. That the notice to vacate dated 29.06.2023 issued to the Tenant by the Landlord is declared invalid and of no legal consequence.



- e. The Complaint/Reference by the Landlord dated 13.12.2023 has been substantially determined by the findings in the above Ruling. Consequently, it is allowed in the same terms and this file is ordered closed.
- f. Each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY OF JULY, 2024**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

**Delivered in the presence of;**

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