



**Muteithia v Wariara (Tribunal Case E040 of 2024)  
[2024] KEBPRT 675 (KLR) (24 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 675 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E040 OF 2024  
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER  
MAY 24, 2024**

**BETWEEN**

**ERIC MUTEITHIA ..... TENANT**

**AND**

**LYDIA WAMBUI WARIARA ..... LANDLORD**

**RULING**

**A. Dispute Background**

1. The tenant/applicant moved this Tribunal vide a reference under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301, dated 13<sup>th</sup> January, 2024 with a complaint that the respondent disconnected electricity at the suit premises damaging three machines in the process and that the respondent had started interfering with the applicant's quiet and peaceful occupation of the suit premises without any justifiable basis.
2. The tenant/applicant filed a Notice of Motion under a certificate of urgency dated 13<sup>th</sup> January, 2024 in which he sought the following orders; -
  - i. That the matter be certified urgent
  - ii. That the court issues interim orders of injunction preventing the respondent from interfering with the tenancy pending the hearing and determination of the application inter-partes.
  - iii. That the court orders the respondent to reconnect electricity supply to the suit premises.
  - iv. That the court issues a permanent order of injunction preventing the respondent from interfering with the tenancy pending the hearing and determination of the main suit.
  - v. That the O.C.S Ngando Police Station do ensure compliance with the said orders.



- vi. That the court issues an order compelling the respondent to compensate the applicant with KES. 84,000 for the damage caused.
  - vii. That the costs of the application be borne by the respondent.
3. The application is supported by an affidavit of even date in which the applicant/tenant deposes as follows; -
- i. That the applicant has been a tenant at the suit premises for 6 years and has been dutifully paying an agreed rent of KES. 65,000 and has no outstanding rent arrears.
  - ii. That on taking up occupation, the tenant/applicant constructed the premises and installed electricity at a cost of approximately KES. 2,000,000 with consent of the respondent.
  - iii. That out of malice, on 12<sup>th</sup> January, 2024, the respondent disconnected electricity from the suit premises damaging three machines in the process.
  - iv. That the said machines will cost KES. 28,000 each to repair.
  - v. That the applicant has no problem continuing to pay rent to the respondent with whom he has a valid and existing landlord-tenant relationship.
4. On 16<sup>th</sup> January, 2023, the court issued interim orders of injunction against the respondent and ordered the respondents to reconnect electricity back to the suit premises pending hearing inter-partes.
5. The application is opposed vide a replying affidavit dated 8<sup>th</sup> February, 2024 in which the respondent/landlady deposes as follows; -
- i. That the applicant has been a tenant for about 4 years.
  - ii. That the original lease agreement was for 3 years which has since expired and was not renewed in writing.
  - iii. That the tenant/applicant has been very problematic and has not been complying with the agreement.
  - iv. That the tenant/applicant has always paid rent whenever he feels like despite having a booming business at the suit premises.
  - v. That the landlady/respondent has tried on several occasions to remind the tenant to comply with the agreement but the tenant always ignores or refuses.
  - vi. That on or about 12<sup>th</sup> January, 2024, electricity supply to the suit premises was disconnected due to rent and electricity arrears.
  - vii. That the 3 machines allegedly damaged by the electricity disconnection are functional and therefore do not require any repairs.
  - viii. That the tenant has resumed business.
  - ix. That the respondent served the tenant with a notice to vacate the suit premises through her agent for failure to pay rent despite several reminders.
  - x. That the tenant has also been a nuisance to other tenants which has greatly affected the landlady's business.



- xii. That the respondent tried to resolve the dispute by involving the area chief but the tenant refused to attend the meetings twice. A copy of the summon to attend the meeting is annexed as “LWW-1”.
  - xiii. That the respondent intends to start construction on the Plot.
  - xiv. That it is not true that the tenant/applicant spent KES. 2,000,000 on electricity at the suit premises since it is the landlady who applied and paid for the electricity connection. A copy of the KPLC Billing Statement is annexed as “LWW-2”.
  - xv. That the tenant has also refused to sign the new lease agreement which is annexed as “LWW-3”.
6. At the court hearing of 12<sup>th</sup> February, 2024, Counsel for the landlady/respondent admitted that the landlady had reconnected the electricity back to the suit premises and also stated that the tenant had not paid rent for the month of February.
7. The tenant/applicant filed a further affidavit dated 27<sup>th</sup> March, 2024 in which he deposes as follows; -
- i. That contrary to the landlady/respondent’s statement, the tenant has been paying rent consistently when it falls due and has no outstanding arrears.
  - ii. That the respondent has admitted the disconnection of electricity to the suit premises which caused losses to the tenant’s business.
  - iii. That the machinery previously damaged as a result of the power disconnection have subsequently undergone repairs incurring a total cost of KES. 84,000 constituting a substantial setback to the tenant. A copy of receipt for the amount spent on repairs is annexed as “EM-001”.
8. The court ordered that the application be disposed of by way of written submissions and both parties complied with the tenant filing his submissions dated 21<sup>st</sup> March, 2024 and the landlady/respondent filing her submissions dated 9<sup>th</sup> April, 2024. We shall consider both submissions as we deal with the issues for determination.

#### **B. Issues for determination**

9. The following issues arise for determination; -
- a. Whether the tenant is entitled to the orders sought in the application dated 13<sup>th</sup> January, 2024.
  - b. Who shall bear the costs of the application?

#### **Issue (a) Whether the tenant is entitled to the orders sought in the application dated 13<sup>th</sup> January, 2024.**

10. The tenant/applicant approached this tribunal seeking for orders of injunction against the respondent/landlady on the grounds that the respondent disconnected electricity to the suit premises thereby interfering with his peaceful enjoyment of the suit premises.
11. The power to grant a temporary injunction is discretionary. In this regard, we shall rely on the locus classicus case of *Giella v Cassman Brown & Co. Ltd* [1973] E.A 385, which outlined the conditions for the grant of a temporary injunction to the effect that; first, an applicant must show a prima facie case with a probability of success, secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated



by an award of damages. And thirdly, if in doubt, the court will decide an application on the balance of convenience.

12. The landlady/respondent admitted that she indeed disconnected electricity at the suit premises due to non-payment of rent as deposed in her replying affidavit dated 8<sup>th</sup> February, 2024. Electricity was later reconnected as admitted at a court hearing on 12<sup>th</sup> February, 2024 as well as in the respondent's submissions, hence a prima facie case has been established as there was no court order authorizing the said disconnection.
13. On whether the applicant shall suffer irreparable harm which cannot be adequately compensated by way of damages, the tenant/applicant in his submissions has referred us to the case of Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR wherein it was stated; -

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

14. The landlady/respondent has admitted in her replying affidavit and written submissions that she served the tenant/applicant with a notice to vacate the suit premises owing to failure to pay rent on time as agreed.
15. The said notice to vacate the suit premises has not been filed by either party, therefore this Tribunal is not able to determine whether it is valid or not. However, the tenant submits that the landlady has threatened him with eviction and that if the landlady continues to harass him with threats of eviction and disconnection of power, he will continue to lose income and may illegally be evicted therefrom. We find that the tenant has demonstrated that he will suffer irreparable harm if the orders sought are not granted as the Landlord will continue to perpetrate her illegal activities against him.
16. Even though the tenant has in his affidavits sworn that he pays his monthly rent dutifully and has no rent arrears, the landlady/respondent has complained that the tenant has failed in his obligation to pay rent on the agreed time as well as failing to pay for his own electricity.
17. This Tribunal is unable to ascertain whether the tenant/applicant is in any rent arrears as none of the parties have tendered any evidence to prove the same. Due to the absence of statements of rent accounts by both parties, we shall direct that the main reference be heard on merit on the issue of rent arrears and we therefore direct that parties file and exchange statements of rent accounts for determination of the issue by this Tribunal.
18. The balance of convenience which is at the discretion of the Tribunal therefore tilts in favor of the applicant for reasons that he stands to suffer economic losses if evicted from the suit premises. Therefore, in the interest of justice, this tribunal will issue the injunctive orders sought pending the final determination of the matter.
19. The tenant has also sought orders for compensation in the sum of KES. 84,000 for the repair of machinery which were damaged due to disconnection of electricity by the landlady/respondent. The tenant has annexed a receipt for the said repairs amounting to KES. 84,000. The landlady on the other hand deposes in her replying affidavit that the said machinery that were allegedly damaged by the electricity disconnection are functional and do not require any repair as alleged.



20. The Tribunal is unable to determine the issue of compensation for the said repairs and the same shall proceed to be heard on merit together with the issue of rent arrears.

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

21. Under Section 12(1)(k) of Cap. 301, Laws of Kenya, costs of any suit before this Tribunal are in its discretion but always follow the event unless for good reasons otherwise ordered. Costs of this application shall abide the outcome of the reference.

**C. Orders**

22. In conclusion, the following orders commend to us; -
- a. The application dated 13<sup>th</sup> January, 2024 is hereby allowed in terms of prayers 4 and 5
  - b. The reference shall proceed to hearing on merit and parties are hereby ordered to comply with Order 11 of the Civil Procedure Rules within the next 14 days hereof.
  - c. Parties shall also file and exchange rent account statements together with evidence of rent payment.
  - d. Costs of the application shall abide the outcome of the reference.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24<sup>th</sup> MAY 2024**

**HON. JOYCE AKINYI OSODO- (PANEL CHAIRPERSON)**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON GAKUHI CHEGE- (PANEL MEMBER)**

In the presence of:

Ms. Chepkemai holding brief for Mr Odera for the Tenant/applicant

Chemutai for the respondent/landlady

