



**Muimara Gym & Fitness Studio v Dansue General Enterprises Limited & 2 others
(Tribunal Case E672 of 2024) [2024] KEBPRT 1329 (KLR) (11 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1329 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E672 OF 2024
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
SEPTEMBER 11, 2024**

BETWEEN

MUIMARA GYM & FITNESS STUDIO TENANT

AND

DANSUE GENERAL ENTERPRISES LIMITED LANDLORD

AND

DANIEL NGANDA AGENT

AND

JOSEPH MUNYOKI CARETAKER

RULING

A. Dispute background

1. The tenant/applicant moved this Tribunal vide a Reference dated 18th June 2024 under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 with a complaint that the respondent/landlord had disconnected electricity supply to the suit premises, that the landlord has been charging the tenant for electricity services such as lighting of common areas, security lights and water pump meant for the benefit of his other tenants and that the landlord had closed the premises despite having no legal authority to do so and despite the tenant being up to date on payment of rent, including for June 2024.
2. The tenant filed a notice of motion under a certificate of urgency dated 9th May 2024 (sic) in which he sought for the following orders; -
 - i. That the application be certified urgent and be heard and determined ex parte.



- ii. That pending the hearing and determination of the application inter-partes, the landlord/ 1st respondent be directed to reopen the demised premises known as two suites at Dansue Flats Off Tegla Lorupe Road off Mombasa Road, Ground Floor (GA and GB) commonly known as Muimara Gym and Fitness Studio, to reconnect electricity account no. 31398724 serving the demised premises, and, be restrained from closing the demised premises, and from interfering in any manner whatsoever with the tenant's occupation and use of the same.
 - iii. That pending the hearing and determination of the Tenant's Reference/ Complaint, the landlord/ 1st respondent be directed to reopen the demised premises known as two suites at Dansue Flats Off Tegla Lorupe Road off Mombasa Road, Ground Floor (GA and GB) commonly known as Muimara Gym and Fitness Studio, to reconnect electricity account no. 31398724 serving the demised premises, and, be restrained from closing the demised premises, and from interfering in any manner whatsoever with the tenant's occupation and use of the same.
 - iv. That the OCS Villa to enforce this Order
 - v. That costs be to the tenant/ applicant.
3. The application is supported by the tenant's affidavit dated 18th June 2024 in which he deposes as follows; -
- i. That by virtue of a tenancy agreement between the tenant and the landlord, the landlord leased two suites at Dansue Flats, Off Tegla Lorupe Road, off Mombasa Road, Ground Floor (GA and GB) commonly known as Muimara Gym and Fitness Studio at a monthly rent of KES. 30,000/- and KES. 15,000/- respectively totalling to KES. 45,000/- payable in advance on 10th day of each month with the latest payment having been made on or about 10th June 2024.
 - ii. That the tenant runs a gymnasium in the said premises which uses electricity to power 4 lighting bulbs, a radio/music system and a hot shower, through electricity account no. 31398724 in the name of the landlord, which the tenant pays for, and which has been paid for and is current.
 - iii. That the landlord had also connected electricity account no. 31398860 to the aforesaid premises by which, for the duration of the tenancy commencing the year 2016, the landlord had been unlawfully charging services to run the operation of its Flat, to power the common areas, security lights and water pump, which the tenant was unaware of and only became aware of on or about April 2023 when the tenant asked the Kenya Power and Lighting to disconnect that account after the tenant paid the amount due then of KES. 34,000. That despite being dormant, the account has accrued an additional KES. 50,302/- as at 30th April 2024, which the landlord seeks to pass on to the tenant.
 - iv. The landlord arbitrarily disconnected the electricity to the premises thereby disrupting the business of the tenant, and started making an unlawful claim that the tenant should pay for the electricity that it never consumed and or used. The tenant accuses the landlord of unlawful charging of electricity expenses despite closure of electricity account no. 31398860.
 - v. That the landlord closed the suit premises in breach of the tenancy agreement.
 - vi. That the tenant has suffered loss of customers who have cancelled their training sessions as they cannot train without electricity and closure of the gymnasium.



- vii. That the tenant is up to date in its obligations but the landlord is in breach of the tenancy agreement.
4. On 19th June 2024, the tribunal issued temporary orders of injunction against the respondents pending hearing inter-partes.
5. The application is opposed vide a replying affidavit dated 27th June 2024 in which the landlord deposes as follows; -
- i. That the applicant witnessed the Kenya Power and Lighting Company personnel disconnecting the electricity.
 - ii. That the power was disconnected for the entire block by the said personnel and the landlord had to pay from his pocket for the outstanding bill including the applicant's bill.
 - iii. That the applicant refunded the amount paid for the operating meter he is referring to and hence power was restored.
 - iv. That immediately the power was disconnected, the tenant started using candles to light up the premises thus endangering everyone and to avoid any catastrophic incidents, the premises were temporarily secured.
 - v. That the applicant sought for orders it did not need as the premises were not locked or electricity disconnected as insinuated in the application and supporting affidavit.
 - vi. That the applicant has not attached a letter from the respondent's advocate confirming that the issues being raised in the application had been agreed upon and a way forward chartered.
 - vii. That the applicant has confirmed that he is a perennial defaulter in paying rent late past the stipulated due date of 5th of every month and now seeks to unjustly seek the court's protection.
 - viii. That the applicant has not availed the alleged tenancy agreement that he has based his reference on hence no prima facie case has been established to justify the continuity of the orders issued by the court.
6. At a hearing on 3rd July 2024, the court granted the applicant leave to file their further affidavit and further ordered that the matter be disposed of by way of written submissions.
7. The tenant/applicant filed a supplementary affidavit dated 18th June 2024 in which he deposes as follows; -
- i. That the suit was filed on 18th June 2024 after the respondents closed the suit premises and disconnected electricity supply thereto and upon ignoring a demand letter dated 17th June 2024.
 - ii. That the tenant had also lodged a complaint with Kenya Power Limited vide a letter dated 10th June 2024 who informed them that the dispute lay at the feet of the landlord who ought to resolve it. That the applicant denies the contention that it had agreed to repay the disputed electricity amount for account no. 31398860 that was being charged unlawfully.
 - iii. That the respondent's advocate's letter dated 19th June 2020 was a culmination of negotiations made on without prejudice basis but only after the suit had been filed did the respondents agree to comply with the court orders.
 - iv. That the applicant denies seeing the Kenya Power and Lighting staff disconnecting electricity.



- v. That the applicant denies allegations of being a perennial rent defaulter which is why the respondents have never levied distress for rent arrears.
- 8. Both parties complied by filing their written submissions with the respondents filing theirs dated 31st July 2024 and the applicant/tenant filing its submissions dated 1st August 2024. We shall consider both submissions while dealing with the issues for determination.

B. Issues for determination

- 9. The following are the issues for determination; -
 - a. Whether the application dated 9th May 2024 (sic) is merited.
 - b. Who shall bear the costs of the application?

Issue (a) Whether the application dated 9th May 2024 (In error) is merited.

- 10. The tenant approached this tribunal seeking for orders that the landlord/respondent reopens the suit premises, reconnects electricity account number 313198724 and that the landlord be restrained from interfering with the tenant's tenancy in any manner.
- 11. The respondent in his written submissions denies closing the suit premises and states that despite reminding the applicant to pay bills for account number 313498860, the tenant declined to do so leading to disconnection of electricity in the entire facility by Kenya Power & Lighting Company.
- 12. The respondent also submits that as per the tenant's letter dated 19th June 2024, the applicant did write a letter to the landlord's Counsel informing them that they shall follow up on the refund of KES. 50,800 paid by the landlord to Kenya Power & Lighting Company as well as the issues relating to account 313498860 and thereafter cause the refund to the landlord by 18th July 2024. That the said letter is an admission that the account belongs to the tenant and that they ought to have made payments to clear the arrears.
- 13. Additionally, the respondent submits that they have been wrongly sued and that the right recourse for the applicant should have been dealing with Kenya Power & Lighting Company who disconnected the electricity.
- 14. The tenant on the other hand in its written submissions states that it is the landlord who disconnected electricity to the suit premises thereby disrupting the tenant's business and that the landlord is making an unlawful claim that the tenant pays for the electricity that the tenant never consumed for account 313498860.
- 15. The tenant also submits that electricity account number 31398724 has been paid for and is current.
- 16. We have perused the supporting documents annexed to the tenant's affidavit and we find that the landlord in the text messages annexed thereto admits to locking the suit premises on account of non-refund of electricity bill paid to Kenya Power & Lighting Company on behalf of the tenant. The landlord stated thus; -

“Gym will remain closed until full money of electricity is paid”
- 17. The tenant has also shown proof of payment of rent and has demonstrated that its right to quiet possession of the suit premises was interfered with by the unlawful closure of the suit premises by the landlord.



18. In regard to disconnection of electricity, we have perused the documents filed by the tenant including the Mpesa payment towards the electricity account 31398724 which demonstrates payment for the said account.
19. In examining whether the orders sought by the Tenant/Applicant are merited, this tribunal shall rely on the locus classicus case of *Giella v Cassman Brown & Company Limited* (1973) E A 358 where the superior court expressed itself on the conditions that a party must satisfy for the grant of an interlocutory injunction as follows: -
- “Firstly, 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. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”
20. As analyzed above, we find that the tenant has demonstrated a prima facie case as it has shown proof that the landlord closed the suit premises illegally causing harm to the tenant’s business.
21. On the issue of the irregular billing of electricity account 31398860, the letter by the applicant to Kenya Power & Lighting Company dated 10th June 2024 is an indication that the issue is to be dealt with by the said Company.
22. In conclusion, we find that the balance of convenience consequently tilts in favor of the tenant and the tribunal shall thus allow the application herein.

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

23. As regards costs, the same are in the Tribunal’s discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall order costs of the application to tenant/applicant.

C. Orders

24. In conclusion, the following final orders commend to us; -
- a. The application dated 9th May 2024 (Sic) is hereby allowed.
 - b. The reference dated 18th June 2024 is settled in terms.
 - c. Costs of KES. 25,000 to the tenant/applicant.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY of SEPTEMBER 2024.

HON. JOYCE AKINYI OSODO

PANEL CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

HON. GAKUHI CHEGE

PANEL MEMBER

In the presence of:



Ombwayo for Tenant

Onsembe holding brief for Mr. Bosire for Landlord/respondent

