



Monica Ndung'u t/a Watene Cafe v Adanna Holdings Limited & 2 others (Tribunal Case E552 of 2022) [2023] KEBPRT 1226 (KLR) (Civ) (14 April 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1226 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E552 OF 2022
CN MUGAMBI, CHAIR
APRIL 14, 2023**

BETWEEN

MONICA NDUNG'U T/A WATENE CAFE TENANT

AND

ADANNA HOLDINGS LIMITED 1ST RESPONDENT

HOMEPLUS REALTORS LIMITED 2ND RESPONDENT

PYRAMID AUCTIONEERS 3RD RESPONDENT

RULING

Introduction

1. The tenant's application dated 27.6.2022 seeks orders restraining the landlord, its agents and auctioneers from proceeding and selling the tenant's tools of trade, and allowing the tenant unrestricted access to the business premises. The application also seeks for orders restraining the Respondents from in any manner whatsoever and howsoever interfering with the tenant's quiet occupation and lawful enjoyment of the suit premises at Unit-no. 2-LR No. 209 (2477) (The suit premises). Police assistance in the compliance with the orders has also been sought.

The Tenant's depositions

2. The tenant has deposed in her affidavit sworn on 27.6.2022, that she is the Respondent's tenant in the suit premises at a monthly rent of Kshs. 150,000/= and has further carried out renovations to the said premises at a cost of Kshs. 800,000/=.
3. The tenant in her affidavit admits to owing rent in the amount of Kshs. 900,000/= and seeks the Tribunal's indulgence to clear the same in three monthly installments.



4. The tenant further depones that the Respondents have sought to evict her from the suit premises illegally and have in the process demeaned her reputation by depicting her as a truant tenant.

The landlord's/Respondent's depositions

5. The 1st Respondent has sworn an affidavit through one of its director Ms. Wairimu Mwai wherein it has been deponed that upon the tenant taking over the suit premises from one Ms. Watere, she assumed the outstanding rent amounts of Kshs. 1,002,058.14/=.
6. The 1st Respondent has further deponed that, the tenant was allowed to pay rent of Kshs. 130,000/= per month for the months of May to August 2022.
7. The 1st Respondent also depones that the tenant has been irregular in the payment of rent and has on occasions issued cheques in payment thereof which have been dishonoured on account of lack of funds in the tenant's accounts.
8. That as at the date of swearing the affidavit, (6.9.2022), the 1st Respondent depones that the tenant had not paid any rent and the accrued arrears had risen to Kshs. 1,552,058.14/= and the Applicant's undertaking to clear the rent have been no more than empty promises.
9. The 1st Respondent depones that any renovations said to have been carried out by the tenant have nothing to do with the rent arrears.
10. The 1st Respondent further depones that the allegation that there is a dispute as to the rent accruing is an attempt to mislead the court.

Analysis and determination

11. The only issue that arises for determination in this matter is whether the tenant is entitled to the orders sought in her application.
12. On 15.7.2022, when this matter came up for hearing, the tenant requested to be allowed to clear the rent arrears in installments. While adjourning the matter, the Tribunal ordered the tenant to pay Kshs. 300,000/= to the 1st Respondent before the next hearing date.
13. On 8.9.2022, Counsel for the 1st Respondent informed the court that the tenant had issued it with a cheque for Kshs. 130,000/= which had been dishonoured. Counsel further informed the court that the rent owing as at the time was Kshs. 1,850,000/=. The tenant was ordered to pay Kshs. 500,000/= within thirty (30) days failing which the landlord would be at liberty to levy distress for rent.
14. On 18.10.2022, the tenant informed the court that she had managed to pay Kshs. 200,000/= which Counsel for the landlord disputed for want of evidence.
15. The tenant's rent statement annexed and marked AH1-1 shows that as at September 2022, the rent arrears were at Kshs. 1,852,058.14/=. The tenant has not challenged the said statement in any material way and I am inclined to agree with the said statement.
16. It is clear that the tenant has not met obligations to pay rent under the tenancy. I, in this respect, agree with the finding of the court in the case of; *Samuel Kipkorir Ng'eno & Another vs Local Authorities Pension Trust Fund (Registered Trustees) & Another*, [2013] eKLR, where the court stated;

“A tenant's first and main obligation is to pay rent as and when it becomes due, for the landlord has the right to an income.”



The court, in the same case proceeded further to deliver itself as follows;-

“The temporary injunction sought in the present application is an equitable remedy at the court’s discretion. He who comes to equity must come with clean hands. A tenant who is in huge arrears of rent is underserving of the court’s discretion. The court cannot be the refuge of a tenant who fails to meet his principle obligation of paying rent as and when it becomes due.”

17. The tenant in this matter no doubt has huge rent arrears. She is not deserving of the exercise of the court’s discretion in her favour in the grant of the injunctive relief sought. Her application dated 27.6.2022 is hereby dismissed.
18. The complaint by the tenant is to the effect that the landlord had instructed auctioneers to levy distress for disputed rent arrears contrary to the provisions of Cap 301 of the Laws of Kenya. I do not think this complaint holds any sway in view of my earlier findings in the application. The tenant being in rent arrears, the landlord was entitled to levy distress for rent under Section 3 of Cap 293 Laws (the *distress for rent Act*) of Kenya.
19. Consequently, the complaint is also dismissed with costs. The costs of the application and the complaint are hereby assessed at Kshs. 50,000/= payable by the tenant to the 1st Respondent.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF APRIL 2023

HON. CYPRIAN MUGAMBI

CHAIRPERSON

14.04.2023

In the presence of;

Ms. Karoki for the landlord

In the absence of the tenant

