



**Muyala v Chandai (Tribunal Case E383, E048 & E102 of 2023
(Consolidated)) [2023] KEBPRT 716 (KLR) (21 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 716 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E383, E048 & E102 OF 2023 (CONSOLIDATED)
A MUMA, CHAIR
NOVEMBER 21, 2023**

BETWEEN

EMMA MUYALA APPLICANT

AND

KELLUM CHANDAI RESPONDENT

RULING

A. Parties and their Representatives

1. The Applicant, Emma Muyala, is the proprietor of Matilda's Mall situated along Bungoma-Buyala Road and the Landlady of the suit premises that is subject matter of this suit.
2. The Firm of M/S Muyala Law LLP represent the Landlady in this matter.
3. The Respondent, Kellum Chandai, is the tenant of the suit premises situate at Matilda Mall.
4. The Firm of M/S Hammerton Maloba & Company Advocates represent the Tenant in this matter.

B. Dispute Background

5. On 14th April 2023, the Landlady filed a reference and an Application seeking eviction orders against the Tenant for the reason that the Tenant was issued with a notice of termination of Tenancy on 11th January 2023 and that's since the effective date being 11th April 2023, the Tenant continues to be in occupation and has refused to vacate.
6. The Court issued interim Orders requiring the Application to be served for inter-partes hearing on 23rd May 2023 and that the Applicant files an affidavit of service.



7. The Landlady subsequently filed an Application dated 8th June 2023 in Tribunal Case No. E102 of 2023 praying that the Court grants him leave to levy distress for rent to recover KShs. 124,200 being rent arrears from the Tenant and that the Tenant be evicted from the suit premises.
8. The Court ordered that the Landlord to serve for hearing on 4th July 2023 and the Tenant to pay rent for June and July.
9. The Tenant then filed an Application dated 30th June 2023 in Tribunal Case E048 of 2023 praying that the Landlady be ordered to unlock the Tenant's business and reinstate the Tenant into the premises immediately failure to which the Tenant should break in and access the business.
10. The Tenant further prayed for compensation in the sum of KShs. 119,750.00 for beverages gone bad during the period the business was locked and compensation for lost business income at a rate of KShs. 15,092.00 a day for 35 days totaling 528,220/-
11. The matters in Tribunal cases E383 of 2023, E102 of 2023 and E048 of 2023 coming up on 21st August 2023, were consolidated and the Court directed that they all be mentioned on 7th September 2023 to confirm whether the parties had entered into a consent, settling the matters.
12. On 7th August 2023, the matters were mentioned and the Tenant and Landlady had come to an agreement and the all goods held by the Landlady had been released to the Tenant and that the only issue for determination was costs.

C. Claim and Defence

13. The Landlady claims that the Tenant is in arrears for the period between January to June. However, the Landlady failed to file her statement of accounts to demonstrate the arrears owed to her by the Tenant.
14. The Tenant in his Affidavit dated 13th September 2023 and submission of the even date submits that he suffered loss of business for 35 days due to closure of the business premises by the Landlord.
15. The Tenant claims that he is entitled to costs of the consolidated matters as they all arose out of the illegal acts of the Landlady through issuance of a notice of alteration of terms to increase rent that was not in the requisite form as required under Section 4 of Cap 301.
16. Further, the Tenant claims that he is not in rent arrears as the notice to increase rent by the Landlady had been invalidated in Tribunal Case No. E001 of 2023 where the Court in Kakamega Ordered the landlady to issue fresh and proper notices which she had not done.

D. Issues for Determination

17. I have carefully perused the documents filed before this Court. It is my considered opinion that the issues that fall for determination are:
 - i. Whether there are arrears owing to the Landlady
 - ii. Whether the Tenant should be compensated for loss of business suffered during the period of closure of the business.
 - iii. Who should bear the cost of the suit



E. Analysis of the Law

i. Whether there are arrears owing to the Landlady

18. The Landlady's claim of arrears owing emanates from an increment in rent from KShs. 5,000.00 to KShs. 8,500.00 and service charge from Kshs. 1300 to Kshs. 1,500.00 through a notice of alteration of terms dated 7th July 2022.
19. In Tribunal Case No. E102 of 2023, the Landlady claims that the tenant has failed to honour the new contract and to pay rent as set. However, I note that the Landlady failed to produce before this Court any documentation to prove that she had followed due process in increasing the rent.
20. Further, the Landlady failed to file her statement of Accounts demonstrating the arrears owing. It is my considered opinion that the arrears sought amount to special damages for the reason that they can be ascertained. It is trite law that special damages must be specifically pleaded and proved.
21. I have carefully analyzed the Mpesa statements filed by the Tenant and I am convinced that the Tenant is not in arrears as he has paid rent and service charge in the sum of KShs. 21,300.00 for the period between January 2023 and May 2023. In the circumstances, this Court finds that the Tenant is not in arrears as claimed by the Landlady.
22. Further, I am convinced that that the notice of termination dated 7th January 2023 is invalid as the Tenant was not in arrears and therefore, the reason for the Landlady for terminating the tenancy as required under Section 7 of Cap 301.

ii. Whether the Tenant should be compensated for loss of business suffered during the period of closure of the business.

23. Pursuant to Section 12 of Cap 301, the Tribunal has power to award compensation for loss incurred by a tenant on termination of a controlled tenancy.
24. It is not in dispute that the Landlady locked the business premises on 15th June 2023 occasioning loss of earnings to the Tenant. It is trite law that a claim for loss of earnings must be specifically pleaded as the same amounts to specific damages. I am guided by the decision in *Capital Fish Limited v Kenya Power and Lighting Company Limited* [2016] eKLR where the Court held:

“The law is settled that a claim for special damages must not only be specifically pleaded but must also be strictly proved with as much particularity as circumstances permit. The appellant apart from listing the alleged loss and damage, it did not... lead any evidence at all in support of the alleged loss and damage. As it were, the appellant merely threw figures at the trial court without any credible evidence in support thereof and expected the court to award them. Indeed, there was not credible documentary evidence in support of the alleged special damages.”

25. I take note that the Tenant did not provide or produce the records from which he extracted the information to come up with the profit stated. It is the conviction of this Court, therefore, that the Tenant ought to have produced proper and sufficient documentary evidence to substantiate his claim of damages. In the circumstances, this Court cannot award damages as claimed.
26. But the actions of the landlord necessitated the tenant to move to the Tribunal thus incurring legal costs which I proceed to award in favour of the Tenant in all the three files as consolidated.



F. Orders

27. The upshot is that the Landlady's Reference and Application dated 14th April 2023 and 8th June 2023 are hereby dismissed in the following terms:

- a. The Tenant's Reference and Application dated 30th June 2023 is upheld.
- b. Costs assessed at KShs. 20,000/- per file in favour of the Tenant totaling 60,000/-

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. MUMA THIS 21ST DAY OF NOVEMBER 2023 IN THE PRESENCE OF KIBABA FOR THE LANDLORD AND NO APPEARANCE FOR THE TENANT.

HON A. MUMA

AG CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

