



**Njeri v Waiganjo (Tribunal Case E716 of 2022)  
[2023] KEBPRT 29 (KLR) (14 February 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 29 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E716 OF 2022  
A MUMA, VICE CHAIR  
FEBRUARY 14, 2023**

**BETWEEN**

**ELIJAH KAMAU NJERI ..... TENANT**

**AND**

**JOSEPH WAIGANJO ..... LANDLORD**

**JUDGMENT**

**A. Parties And Representatives**

1. The applicant Elijah Kamau Njeri is the tenant and rented space on the suit property situated at Mwiki Deliverance Road. (hereinafter known as the ‘tenant’)
2. The Applicant/tenant appears in person in this matter.
3. The respondent is the landlord and rented out space to the tenant on the suit property (hereinafter known as the ‘landlord’)
4. The firm of SM Gioche & Company Advocates represent the Landlord/Respondent in this matter. kaniarugioche@gmail.com

**B. The Dispute Background**

5. The tenant/applicant has moved this tribunal by way of reference and a Notice of Motion application dated August 5, 2022 under section 12(4) of the Landlords and Tenants (Shops, Hotels and Catering) Establishments Act Cap 301. The tenant was seeking that pending the hearing and determination of the suit the Landlord allow the tenant access to the premises, that the Landlord return goods belonging to the Tenant that had been confiscated and that upon reinstatement back to the premises the Landlord be restrained from interfering with their occupation.



6. The Landlord has filed a Preliminary Objection dated August 31, 2022 alleging that there is no tenancy relationship and that the premises is currently occupied by a new Tenant.
7. The Tribunal gave orders on 7<sup>th</sup> October requiring that the Landlord return the goods belonging to the Tenant and that the parties file a claim for damages. The same is what is currently before the Tribunal for assessment.

### **C. Jurisdiction**

8. The Jurisdiction of this Tribunal is in dispute.

### **D. List Of Issues For Determination\***

9. It is the contention of this Tribunal that the issues raised for determination are as follows;
  - a. Whether the Tribunal has jurisdiction to entertain the Tenants claim for damages?
  - b. If the tribunal has jurisdiction, how much damages is awardable to the Tenant?

### **E. Analysis And Findings**

#### **Whether the tribunal has jurisdiction to entertain a claim for damages?**

10. The [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Chapter 301 Laws of Kenya Act at section 12 (4) provides as follows;

'In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit.'

11. The above provision accords the Tribunal additional powers to investigate any complaints relating to controlled tenancies and make orders as they deem fit. In the present case, despite the fact that the Tenant is no longer in the premises, the suit matter originated at a time when a tenancy relationship still existed between the parties. Additionally, the means by which the relationship was terminated was not in accordance to the procedures stipulated under Section 4 of CAP 301.
12. The tenant has filed their claim and presented before this Tribunal that they were not issued with a notice as is statutorily required under section 4 of CAP 301. Further they have stated that in addition to the Landlord locking the premises they also proceeded to confiscate their goods.
13. The Tribunal gave orders on 7<sup>th</sup> October requiring that the Landlord return the goods back to the tenant which was done on October 18, 2022, however the Tenant avers that due to the nature of the business they were carrying on some of the goods had gone bad.
14. The Landlord has in response to the Tenant's claim for damages filed an affidavit dated November 14, 2022 alleging that the tenant's averments are false and that they should proof the same. They have also presented in the aforementioned affidavit that they do not owe the tenant security deposit for rent, water and electricity which are some of the items that the tenant would want compensation for.



15. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya Act at section 12 (1) (l) accords the Tribunal as one of its powers the Jurisdiction to;
- ' Award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill, and improvements carried out by the tenant with the landlord's consent;'
16. In Tribunal Case No 8 of 2019 *Robert Ayieko Angoi v Lena Sarange [2021] eKLR*, where the matter was instituted by virtue of a Notice of Termination issued to the tenant by the landlord. The tenant did not file a Reference opposing the said notice and as a result, the Court gave orders allowing Landlord to evict the tenant.
17. The tenant thereafter filed for stay of the above orders and averred that there was no tenancy relationship between themselves and the landlord. When the matter later came up for hearing the Tribunal proceeded to order that the premises be reopened and returned to the landlord.
18. The Tenant aggrieved by the above decision proceeded to appeal through ELC Appeal No 12 of 2019. During the appeal several matters arose which the appellate court felt were not fully addressed by the Tribunal. One such matter was the question on the tenancy relationship between the parties.
19. The appellate court established that the owner of the premises had leased the premises to both the tenant and the landlord without their knowledge. This as a result, created a scenario where the tenant was a sub-tenant of the alleged landlord despite there being no lease agreement between them. This then explained why the landlord had issued the tenant with a notice to terminate. The Tribunal did not investigate this issue prior to issuing of the Ruling and as such did not give an explanation as to why they returned the premises back to the landlord.
20. Based on the above the Court was of the opinion that the only recourse available for the tenant was damages for loss of tenancy. The Court stated that:
- ' The appellant's only recourse is in damages for loss of tenancy. The appellant is at liberty to sue the owners of the demised premises for a refund of the unutilized rent and general damages for breach of the agreement.'
- ' In view of the foregoing, I find merit in the appeal and allow it. The matter is referred back to the Tribunal for assessment of the appellant's damages for loss of tenancy.'
21. Based on the holding above, the Court further established the Jurisdiction of the Tribunal to assess and award damages in a matter relating to a Controlled Tenancy.
22. In the case of *Antique Auctions Ltd v Pan African Auctions Ltd [1993] eKLR* the Court of Appeal defined the term damages according to the McGregor book on Damages as follows:
- ' Pecuniary compensation, obtainable by success, for a wrong which is either a tort or a breach of contract, the compensation in the form of a lump sum which is awarded unconditionally, and is generally, but now not necessarily, expressed in English currency.'
23. The Tribunal in Tribunal Case No 8 of 2019 *Robert Ayieko Angoi v Lena Sarange [2021] eKLR* stated in relation to the form of damages that;
- ' Damages may be in the form of general damages or special damages. Special damages have to be specifically pleaded and strictly proved by evidence. This would include the costs incurred



by the Tenant as a result of the eviction or specific damage to property that was in the premises during the eviction.'

24. The Court of Appeal stated its position on specific damages in the case of [\*Richard Okuku Oloo vs South Nyanza Sugar Co Ltd \[2013\] eKLR\*](#) as follows:

' We agree with the learned judge that a claim for special damages must indeed be specifically pleaded and proved with a degree of certainty and particularity but we must add that, that degree and certainty must necessarily depend on the circumstances and the nature of the act complained of.'

25. While differentiating between special and general damages the Court of Appeal in the case of *Antique Auctions Ltd v Pan African Auctions Ltd [1993] eKLR* stated that;

' Compensation for a wrong committed could be claimed as general damages or special damages. In general damages compensation cannot be quantified but will be assessed by the court. In the case of special damage, such claim of the loss must be specifically pleaded and strictly proved. Proof of damages is by evidence and the Court will decide each case on balance of probability.'

26. In the Case of [\*Rose Wangui Githioni v Nancy Nyambura Maina \[2017\] EKLR\*](#) the tenant had been prematurely evicted from the premises after the Landlord removed their goods and locked the premises.

27. The tenant filed a claim and was awarded General Damages of Kshs 300,000 plus costs and interests by virtue of the fact that they had suffered loss of business. The Landlord filed an appeal and one of the grounds was in relation to the fact that the Trial Court had awarded the tenant general damages in a matter involving a breach of contract. The appellate court upheld the decision of the trial Court.

28. In arriving at this decision, the Court relied on an argument presented by the tenant where they relied on the case of [\*Marine Management Association & Another vs National Maritime Authority \(2012\) 18NwLR 504\*](#) which stated as follows;

' Whereas the general principle is that courts do not normally award damages for breach of contract, there are exceptions such as when the conduct of the respondent is shown to be oppressive, high-handed, outrageous insolent or vindictive.'

29. I wish to place reliance on the above case in my determination to award General Damages to the tenant in this present case. The Landlord acted in a manner that falls within the ambit of the exceptions stated above. The landlord terminated the tenancy prematurely. They failed to issue the tenant with a notice to terminate as required under CAP 301 by virtue of their relationship being a Controlled Tenancy. Further, the Landlord took away the goods of the tenant and due to the perishable nature of the tenant's business, some of the goods went bad.

30. The Tribunal is convinced that the above actions by the landlord can be deemed as 'oppressive, high-handed, outrageous, insolent or vindictive'. This then allows this Tribunal to award the tenants General Damages for the breach of contract by the landlord.

31. In light of the foregoing and having assessed the claim by the Tenants the Tribunal awards them damages of Kshs 23,000.00



## **F. Orders**

- a. The upshot is that the Tenant's Reference dated August 5, 2022 is hereby upheld in the following terms:
- b. The Landlord shall pay to the Tenant damages of Kshs 23,000.00 plus interest from the date of filing this reference within 30 days.
- c. The Tenant shall have Costs assessed at Kshs 10,000/-

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 14<sup>TH</sup> DAY OF FEBRUARY 2023 IN THE PRESENCE OF ELIJAH KAMAU TENANT IN PERSON AND GIOCHE FOR THE LANDLORD.**

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

