



**Abdikadir Ahmed t/a Uptown Restaurant v Chumz Limited & another (Tribunal
Case E481 of 2023) [2023] KEBPRT 1229 (KLR) (3 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1229 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E481 OF 2023
CN MUGAMBI, CHAIR
NOVEMBER 3, 2023**

BETWEEN

ABDIKADIR AHMED T/A UPTOWN RESTAURANT TENANT

AND

CHUMZ LIMITED 1ST LANDLORD

MAGEETA INVESTMENT LIMITED 2ND LANDLORD

RULING

Introduction

1. The tenant's application dated 11.6.2023 seeks the substantive order that pending the hearing and determination of the suit, the Respondents be enjoined from interfering with the tenant's occupation, possession or interest in the suit property known as L.R. no 330/298 Kilimani, Ole Dume road.

The Tenant's depositions

2. The tenant's affidavit sworn on 5.5.2023 in support of the application may be summarized as follows hereunder:
 - a. That the 2nd Respondent is the legal proprietor of the property known as L.R. no 330/298 Kilimani, along Ole Dume road (hereinafter referred to as the suit premises).
 - b. That the 1st Respondent was a lessee of the 2nd Respondent until the 1st Respondent's lease was terminated by the 2nd Respondent for non-payment of rent.
 - c. That initially the Applicant had sublet the suit premises from the 1st Respondents and thereon carried out substantial developments.



- d. That on 30.9.2022, the Applicant received a landlord's notice to terminate tenancy from the 2nd Respondent addressed to the 1st Respondent.
- e. That on 1.12.2022, the 2nd Respondent took possession of the suit premises.
- f. That in order to protect his investments, the Applicant entered into a lease agreement with the 2nd Respondent on 4.12.2022.
- g. That whereas there is a pending dispute in court touching on the ownership of the suit premises, the 1st Respondent has continuously harassed the tenant demanding quarterly rent whereas under the terms of the initial lease agreement, the rent was payable quarterly.
- h. That the Respondent has a court ruling dated 20.4.2023 authorizing her to receive rent from the Applicant pending the outcome of NBI ELC Suit no 362 of 2022.

The Landlord's/Respondent's depositions

3. The 1st Respondent's replying affidavit sworn by Ms. Muchiri Wambugu, a director of the 1st Respondent may be summarized as follows hereunder:-
 - a. That the Applicant and the 1st Respondent entered into an agreement on 1.8.2022 for the lease of a restaurant situated in the suit premises and that further, the lease was for a period of five years and three months.
 - b. That as per the lease, the rent was payable quarterly in advance by the 5th day of every month.
 - c. That in breach of the lease agreement, the tenant has failed to pay the rent since December 2021 and is in rent arrears amounting to ksh 3,795,000/=.
 - d. That the tenant has blocked the common entrance and also failed to settle electricity bills in further breach of the lease agreement.
 - e. That the 1st Respondent has filed an ELC case no E362 of 2023 against the 2nd Respondent restraining the 2nd Respondent herein from interfering with the suit premises in this suit.
 - f. That on 9.3.2023, the Environment and Land Court (hereinafter the ELC), issued orders to the effect that the 1st Respondent should remain in charge and control of the said premises, the Applicant was duly notified of these developments and requested to make all rent payments to the 1st Respondent.
 - g. That on 20.4.2023, the ELC delivered its ruling and granted the injunction sought by the 1st Respondent and declared that all agreements entered into by the 2nd Respondent during the pendency of ELC case no E362 of 2023 were of no effect.
 - h. That the Applicant has refused to pay the rent as per the ELC rulings and directions.
 - i. That the Applicant has not produced any evidence to show that he paid the rent for December 2022 to March 2023 to the 2nd Respondent save for a payment slip of ksh 350,000/= dated 8.5.2023.
 - j. That the Applicant has also not paid the rent for May and June as directed by the court on 19.5.2023.
 - k. That by this application, the tenant is requesting the court to assist him to appropriate the suit land when his lease was not for the land but for the building housing the restaurant.



4. The 1st Respondent has also filed a notice of preliminary objection dated 26.6.2023 on the grounds that:-
 - a. The Tribunal lacks jurisdiction as this matter falls within the power of the Environment and Land Court under Section 13 of the [Environment and Land Court Act](#) no 19 of 2011.
 - b. That the suit is fatally defective and offends Section 12 of Cap 301.
 - c. That the application is frivolous and an abuse of the process of the Tribunal.

Analysis and determination

5. The issues that arise for determination in this application and which even the parties seem to be agreed upon are the following:-
 - a. Whether the Tribunal has the jurisdiction to hear and determine the matter.
 - b. Whether the Applicant is entitled to the orders sought in his application dated 11.5.2023.

Issue A

6. The lease agreement relevant to this dispute is the one dated 1.8.2022. the same is for a period of five years and three months. Clause (1)(L) of the lease provides as follows:-

“Either the landlord or the tenant may terminate this agreement by giving three (3) calendar months’ notice in writing or three (3) months equivalent in lieu of notice.”

In view of the above provisions, the tenancy between the parties is a controlled tenancy as defined under Section 2 of Cap 301 and the parties are agreed on this legal status of their tenancy.

7. The 1st Respondent’s submission is based on the assumption that the Applicant is making out a claim for the land comprised in L.R. no 330 of 298 Ole Dume road. But is this the position? I do not think so.

The reference filed by the Applicant clearly shows that he is trading as Uptown Restaurant And Lounge and the said business premises is in land parcel no L.R. no 350/298. It is also the tenant’s complaint that the 1st Respondent is interfering with the general operations of the tenant’s business in L.R. no 330/298 Ole Dume road. It is also clear from the Applicant’s application that the Applicant is seeking against the 1st Respondent restraining the Respondent from “interfering with the tenant’s occupation, possession and/or interest in the suit property known as L.R. no 330 of 298 Ole Dume road.

It is clear that the Applicant’s interest in the suit land is the restaurant and lounge business in the suit premises. The Applicant lays no claim to the land. I do find that the tenant being a protected tenant has every right to approach the Tribunal for protection.

8. The landlord/1st Respondent has also objected to this suit on the basis that it offends the provisions of Section 12 of Cap 301. I have gone through the proceedings and submissions of the 1st Respondent and for myself, I cannot identify any offence to the provisions of Section 12 of Cap 301.
9. Consequently, I do not find any merits in the preliminary objection raised by the 1st Respondent and the same is hereby dismissed.
10. Is the Applicant/tenant entitled to the orders sought in his application? The Applicant has deponed in his affidavit that he has been paying rent for the suit premises to the 2nd Respondent since December 2012 to March 2023. In response to this, the 1st Respondent has deponed that the tenant has not



produced any evidence of the payment of rent as claimed save for a payment of ksh 350,000/= made on 8.3.2023. from the annexures by the tenant, I do note that on 31.1.2023 and 8.3.2023, he paid ksh 350,000/= and ksh 700,000/= respectively. The agreement pursuant to which the tenant/Applicant alleges to have paid rent to the 2nd Respondent is the one dated 4.12.2022. The ELC in its ruling of 20.4.2023 in ELC Case no E362 of 2022 at paragraph 17 ruled as follows:-

“Considering that the suit was filed in November 2022, then the status quo appertaining at the time of institution of the suit should operate until the case is determined. This means that the agreements which the defendants purportedly entered into with other third parties during the subsistence of this suit are of no effect.”

This effectively means that the agreement purportedly entered into between the Applicant and the 2nd Respondent and pursuant to which the tenant paid rent is of no effect and the tenant is therefore required to pay rent to the 1st Respondent as per the lease agreement between the parties dated 1.8.2022.

11. The 1st Respondent has deponed that the tenant is in rent arrears amounting to a ksh 3,325,000/=, the affidavit was sworn on 30.6.2023 but from the record, I do note that on 10.7.2023, counsel for the tenant informed the court that the rent for May and June 2023 had been paid. Even if this were so, the tenant would still be in rent arrears as the rent payments are in accordance with the lease dated 1.8.2022. It is to be noted that apart from the statement from the bar by Counsel for the tenant, the tenant has not in any material manner challenged the deposition by the landlord that he is in rent arrears as per paragraph 5 of the landlord's replying affidavit.
12. The dispute between the parties herein is essentially one for the payment of rent and not one for termination of the tenancy. In order to balance the interests of both parties, and pursuant to the provisions of Section 12(e) of Cap 301, I hereby make the following orders.
13. That the tenant will clear the rent arrears within the next thirty (30) days of this ruling.
14. That after the expiry of thirty (30) days and the tenant failing to comply with order (a) above, the landlord will be at liberty to levy distress for the rent due.
15. That the tenant shall bear the costs of this application.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF NOVEMBER 2023

HON. CYPRIAN MUGAMBI

CHAIRPERSON

03.11.2023

In the presence of; Ms. Masinde for Otieno for the 1st Respondent

In the absence of other parties

