



Nairobi Elite Academy v Association of Evangelicals In Africa (Tribunal Case E427 of 2024) [2024] KEBPRT 1207 (KLR) (28 August 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1207 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E427 OF 2024
GAKUHI CHEGE, CHAIR
AUGUST 28, 2024**

BETWEEN

NAIROBI ELITE ACADEMY PLAINTIFF

AND

ASSOCIATION OF EVANGELICALS IN AFRICA DEFENDANT

RULING

1. On 14th June 2024, this Tribunal delivered a ruling in which the following orders were made;
 - “(a) The tenant’s applications dated 3rd and 13th May 2024 are hereby allowed in the following terms;
 - (i) Prayer 3 of the application dated 3rd May 2024 is allowed but prayer 4 thereof is declined.
 - (ii) Prayers 2 & 3 of the application dated 13th May 2024 are granted.
 - (b) The landlord’s application dated 7th May 2024 is hereby dismissed.
 - (c) Both parties shall file and exchange within the next 21 days hereof, statements of rent account showing debits and credits for the entire duration of the tenancy from inception to date together with filtered documentary evidence of rent payments to enable us determine whether indeed any rent is owing by the tenant to the landlord.
 - (d) The issue as to who is liable to pay costs shall be determined together with issue (c) above.
 - (e) The matter shall be mentioned on 4th July 2024 to confirm compliance.”



2. In compliance with the said ruling, the landlord's advocates by a letter dated 3rd July 2024 forwarded their client's summary statement and supporting bank statements in respect of rent payments made by the tenant herein from the year 2014 to date.
3. By a letter dated 11th July 2024, the tenant's advocates on the other hand forwarded their client's summary statement and supporting documents in respect of rent payments made to the landlord from the year 2024.
4. On 16th July 2024, both parties were granted 2 days each to file and exchange their submissions with the tenant starting. However, only the landlord's Counsel complied with the said directions.
5. We are required to determine whether the tenant owes any rent to the landlord and if so, the quantum thereof. We are also required to determine who is liable to pay costs of this suit.
6. The landlord and the tenant herein entered into a Lease Agreement dated 18th December 2014 in which it was agreed that the tenant would occupy the buildings and structures erected on Land Reference Number 11605/4 for a duration of three (3) years.
7. The lease agreement expired on 17th December 2017 and having not been renewed and the tenant remaining in possession, it automatically converted into a periodic tenancy in accordance with the provisions of Section 57 (1)(c) of the Land Act. The rent payable by the tenant remained at KShs.42,000/- per month.
8. The landlord filed its updated rent summary statement vide its letter of 12th July 2024. The said statement was filed after its initial statement of 3rd July 2024. The landlord's Counsel in his submissions observes as follows
 - a. The landlord's statement is to be read alongside the supporting bank statements that were provided to the Tribunal on 3rd July 2024.
 - b. The statement captures the rent invoiced and rent paid for the duration 2014-2024 (including July 2024). The statement also captures a rebate of rent that was given on 10th August 2021 in the sum of KShs. 378,000/-.
 - c. The statement shows rent owing in the sum of KShs. 163,916/-.
9. The Tenant filed its rent statement vide its letter of 11th July 2024. The landlord's Counsel makes the following observations regarding the rent statement filed by the tenant:
 - i. A majority of the supporting documents for the tenant's summary statement are the landlord's bank statements (pages 1-38 and 40 - 66). Counsel for the tenant confirmed that the Tenant did not have its own records for the period 2014-February 2021.
 - ii. The four payments highlighted in yellow in the tenant's summary statement are recognized in the landlord's summary statement of 12th July 2023 as items 38, 48, 57 and 60.
 - iii. At page 39, the tenant has produced a letter from the Landlord dated 10th August 2021 which clearly states that the outstanding rent (post waiver) stood at KShs. 891,520/-. This figure accords with item 35 appearing in the landlord's summary statement dated 12th July 2024. Curiously, the letter produced by the tenant has portions that are redacted so as to deliberately mislead this Tribunal that the figure of KShs. 891,520 was prior to the waiver. For the Tribunal's reference, the landlord's Counsel has annexed to his submissions as Schedule 1, the full version of the said letter which appears as "LWM- 3 attached to the affidavit dated 7th



May 2024 filed by the Landlord. In simple terms, the tenant is claiming the Covid-19 rebate of KShs. 378,000/-twice.

- iv. Pages 68-72 of the tenant's statement are already captured in the Landlord's summary statement dated 12th July 2024 as follows:

	Tenant Supporting Document Page Number	Item(s) in Landlord's Summary Statement
1.	Page 68	52
2.	Page 69	42 & 43
3.	Page 70	56, 51, 50, 49 (total Kshs 84,084), 47, 39, 38, 36 and 31.
4.		70, 69, 68,67, 66, 65,64, 63, 62,61, 60, 59, 58, 57, 55, 54 and 53
5.		48,46,45,44,41,40,37,34,33 and 32

10. Based on the foregoing analysis by the landlord's Counsel, it is apparent that the Landlord's summary statement dated 12th July 2024 as read with its bank statements (supplied on 3rd July 2024) provide the correct position that the Tenant is in arrears in the sum of KShs. 163,916/-.
11. We therefore find and hold that the tenant's summary statement is both inaccurate & incomplete for reasons that the tenant has not been able to provide supporting records evidencing rent payments for the period 2014-2021 and has sought to rely on the same documents produced by the landlord in this case.
12. Secondly, the 4 payments highlighted in yellow in the tenant's summary statement are already captured in the Landlord's rent summary statement of 12th July 2024. In addition, the tenant's summary statement contains a "double claim" of the waiver in the sum of KShs. 378,000/- as evidenced by the incomplete document reproduced on page 39 of its documents which omits critical information. We have seen and considered the complete version of the Landlord's letter dated 10th August 2021 attached to the submissions in arriving at the decision that the tenant's said exhibit is concocted. Finally, we have noted that the tenant's records appearing on pages 68- 72 are already captured in the Landlord's summary statement highlighted above.
13. In regard to the issue of VAT, we agree with the landlord's submissions that Value Added Tax is chargeable on non-residential properties in accordance with the VAT Act, 2013. The same applies to the rent relating to the suit property.
14. Section 5 (4) of the said Act provides as follows;

“The amount of tax payable on taxable supply if any, shall be recoverable by the registered person from the receiver of the supply, in addition to the consideration.”



15. The Landlord's summary statement shows that prior to the grant of the Covid-19 waiver, VAT had previously been charged for four (4) successive quarters. The letter of 10th August 2021 pursuant to which a waiver of KShs. 378,000/- was granted based on rent that was VAT inclusive as is evident by a comparison between the said letter and the Landlord's summary statement.
16. Finally, the Landlord submits and we agree, that VAT is an amount payable to the government and does not comprise rent. In any event, Clause 2 of the (now expired) lease of 18th December 2024 provided that the tenant had the following obligation:
- “To pay the reserved rent at the times and in the manner specified without any deduction or set-off whatsoever.”
17. The said provision accords with the law and being what the two parties agreed upon cannot be altered by this Tribunal.
18. The Tenant as demonstrated above is in rent arrears of KShs. 163,916/-. However, the landlord on the other hand engaged in acts which did not accord with Cap 301 in its attempts to recover the said rent arrears and possession of the suit premises from the tenant. We shall order each party to meet own costs of the application.
19. We note that the tenant filed an application dated 16th August 2024 seeking to amend its pleadings in the pendency of this ruling and we shall direct that the same be immediately served upon the landlord for purposes of further directions on the manner of hearing thereof. This shall however not be a reason for non-payment by the tenant of the rent found due and all future accruing monthly rent pending expiry of the tenancy period given in the ruling of 14th June 2024.
20. In conclusion, the following orders commend to us in this matter;
- a. The tenant is liable to pay a sum of Kshs 163,916/= to the landlord in accrued rent arrears as at July 2024.
 - b. The said amount shall be paid to the landlord together with any other accrued rent within the next 21 days hereof and in default, the landlord shall be at liberty to use lawful means to recover the same.
 - c. The tenant shall continue paying monthly rent to the landlord as and when the same falls due and payable until expiry of the period stipulated in the ruling of 14th June 2024.
 - d. The tenant's application dated 16th August 2024 shall immediately be served for hearing inter-partes on a date to be fixed by this Tribunal.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY of AUGUST 2024.

HON. GAKUHI CHEGE - (PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON. JOYCE A. OSODO - (PANEL MEMBER)

In the Presence;

Kimathifor the Landlord

Ragot for the Tenant

