



**Mutisya t/a Passover Wines & Bar v Janji (Tribunal Case E044 of 2022)
[2023] KEBPRT 287 (KLR) (Civ) (5 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 287 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E044 OF 2022
A MUMA, VICE CHAIR
MAY 5, 2023**

BETWEEN

JOSEPH NYILU MUTISYA T/A PASSOVER WINES & BAR APPLICANT

AND

REMI JANJI RESPONDENT

RULING

A. PARTIES & THEIR REPRESENTATIVES

1. The Applicant, Joseph Nyilu is the tenant occupying the Premises located at Ukunda, Kwale county that are the subject matter of the present suit. (hereinafter “the tenant”).
2. The Applicant appears in person in these proceedings.
3. The Respondent herein is the Landlord of the Premises that is the subject matter of the present suit. (hereinafter “the Landlord”).
4. The Respondent is represented by the Firm of Amany & Company Advocates (amanyalaw@gmail.com).

B. DISPUTE BACKGROUND

5. Through a Notice of Motion dated 28th February 2022 and Reference of even date, the tenant moved this honourable Tribunal seeking among Orders, that the Tribunal direct the Landlord to remove the padlock from the suit premises and to allow the tenant to have access.
6. Vide an Order issued on 11th March 2022, the Tribunal certified the matter as urgent and directed the tenant to serve for inter partes hearing on 5th May 2022. On 5th of May 2022 the matter was stood over to 11th May 2022 and on this day the court after listening *viva voce* to both the Tenant and Landlord



established that the tenant was no longer in the premises and ordered him to pick all his items back and be reimbursed his deposit and hand over vacant possession parties were additionally ordered to file for damages.

7. The Landlord through a Notice of Motion dated 24th October 2022 under a certificate of urgency approached this Tribunal seeking orders inter alia, that restraining orders be granted against the Respondents from visiting the Landlord's residence and the Tribunal and to be pleased to set aside its Orders issued on 11th May, 2022. The Applicant also prayed that the orders if granted, be supervised by the O.C.S Diani.
8. This application was presented before this honourable Court for consideration on 26th October, 2022. In the absence of the Tenant and in the presence of the Landlord in person, the Tribunal in the absence of the tenant issued an Order dismissing the Tenant's reference dated 28th February 2022 for want of prosecution. It further ordered that the Landlord was at liberty to rent out the suit premises. The Tenant later appeared virtually in person citing network challenges and the earlier orders to dismiss were vacated and Landlord further ordered to release the tenants items as per orders of 11th May 2023
9. On 8th March 2023, this matter was fixed for a Ruling on 28th April 2023. However, due to inadvertent error by the registry, the matter was cause listed 19th April 2023.
10. Consequent to the error, the Landlord filed an application dated 17th March 2023 seeking among other Orders that the said Ruling be arrested by the Application on the grounds that the Tenant could be colluding with the Court registry and this Honourable Tribunal to subvert justice and obtain favourable Orders.

C. THE APPLICANTS CASE

11. The said Reference by the Applicant dated 28th February 2022 is supported by key grounds being the Landlord has been and continues to frustrate his tenancy by inhibiting his access to the suit premises barring him from conducting the business.
12. In support of his case, the Applicant has sworn a Supporting affidavit dated 28th February 2022. In the Affidavit, he stated the context of the background of the suit and provided pertinent evidence thereof. He deposed that he had been sending all monthly rent to the Oliver Family Agency, the Respondent's appointed and recognized agent.
13. He further averred that the Respondent through his agent closed his business on 15th December 2021 and issued him a condition to either change the business or vacate the premises.

D. THE RESPONDENTS' CASE

14. In his Application dated 24th October, 2022, the Respondent stated that the Applicant fell into arrears of rent. That fervent attempts to claim the rent went futile as the Applicant deliberately failed to make good the default.
15. The Application is supported by a sworn affidavit stating among other grounds that the Respondent was not served by the Applicant any orders whatsoever.
16. That the Respondent made several attempts in asking the tenant to vacate as a result of the arrears. In an adverse response, the tenant closed the premises and disappeared.
17. It is his case that the tenant has refused to pick his belongings from the suit premises. That instead, he has made list of assessment of items that he wants to be paid as damages in an attempt to extort money from the Landlord.



18. On the basis of these grounds, the Applicant urged this Tribunal to allow his application as prayed.

E. TENANT'S SUBMISSION

19. In further support of his case the tenant filed written Submissions dated 11th March 2023 in which strongly submitted that this honourable Court deny the Respondent's request to set aside the Tribunal's Order dated 11th May 2022.
20. He submitted that this Honourable Tribunal cannot grant Orders in vain and as such should remain reluctant from departing from its decision directing the Landlord to give the tenant his belongings and that the tenant do file statement of assessment of damages.

F. ISSUES FOR DETERMINATION

21. It is the contention of this Tribunal that issues that fall for determination are:
- i. Whether Landlord's Application dated 17th March 2022 is meritorious.
 - ii. Whether the tenant should be paid damages by the Landlord.

G. LANDLORD'S SUBMISSION

22. On 17th March 2023, the Landlord filed written submissions in which he submitted on among other issues; obligation to pay rent; and, service of pleadings.
23. On the issue of service of Pleadings, citing the case of *Moses Mwicigi & 14 others v Independent Electoral and Boundaries Commission & 5 others* [2016] eKLR, the Respondent submitted that the Applicant was under obligation to serve him as per the direction of the Tribunal. It was his submission that the Tenant fell short of proper procedure by deliberately failing to serve him.
24. On the issue of rent payment, the Respondent citing various jurisprudence submitted that it is the responsibility of a tenant to pay all rent as they fall due. Failure to which they be in breach and default.

H. ANALYSIS AND DETERMINATION

25. I have given a full consideration to the Applicant's Reference, Notice of Motion Applications (by the Applicant and the Respondent) and the supporting documents. First, I wish to state that the jurisdiction of this Tribunal was not contested by any party.
26. Before dealing with the merits of the Tenant's Application dated 28th February 2022, I wish to dispense with the Respondent's (Landlord) interlocutory application dated 17th March 2023 in which he sought to arrest the instant Ruling scheduled today, the 28th day of April 2023.
27. In support of his prayer to arrest the present Ruling, the Respondent stated in his sworn affidavit that the Tenant could be colluding with the Court registry and this Tribunal to subvert justice. That the Ruling had initially been scheduled on 28th April 2023, then abruptly changed to 19th April 2023, without his knowledge.
28. It is my finding that the Respondent's allegation on subversion of justice by this Tribunal is not substantiated nor proved. The same is based on an administrative mistake of the Ruling date, which is hereby clarified to have been an inadvertent error made by this Tribunal's registry. Further, this Tribunal made directions in the proceedings on 19th April 2023, and that the Ruling date be sustained, this causes no prejudice on either party.



29. Consequent to the foregoing findings, the Respondent's Application dated 17th March 2023 is hereby dismissed.
30. I now turn to the issues raised in Applicant's Notice of Motion dated 28th April 2022. It is my respectful view that the only issue to be grappled with here, is the issue of assessment of damages.
31. I note that the Landlord closed the suit premises from 15th December, 2021 up to 8th February 2022, as a result of his action, tenant's business was not in operation for the said period. The same has not been disputed by the Landlord.
32. Further, I note that the Tenant fell into rent arrears, for the period between January 2022 and March 2022, both months included, which period the suit premises had been closed by the Landlord barring the Tenant's access. This closure was of course without leave of the court as required by Cap 301, I therefor find merit in a claim for damages by the Tenant.
33. It is in the mind of this Tribunal and as evidenced by its Orders and proceedings on diverse dates such as on 11th May 2022, 18th January 2023 and 26th October 2022 that the tenancy relationship between the Landlord and the Tenant lapsed. The Landlord closed the suit premises thus barring the Tenant from its access.

I. ORDERS

34. In view of the above, and from this Tribunal's proceedings on 11th May 2022, I find that the relationship between the Applicant and the respondent ended subsequent to which the Tribunal ordered the tenant to vacate. I am well guided by the proceeding and Orders of this Tribunal on that date. However since the landlord claims lack of service of pleadings it is his right to have a fair hearing which will enable him respond appropriately. I will give parties a second chance to ventilate the issue damages (if any).
35. The upshot is that the:
- a. Landlord's Application dated 17th March 2023 is dismissed.
 - b. The Tenant to file a statement of assessment of damages afresh in 14 days together with a supporting affidavit and submissions and serve the Landlord, the Landlord to respond within 14 days after the service thereof.
 - c. Landlord to give Tenant any items of his still in his possession before hearing date and Hearing is fixed for 14th June 2023.
 - d. Costs shall be in the cause.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. MUMA THIS 5TH DAY OF MAY 2023 IN THE PRESENCE OF MBOYA HOLDING BRIEF FOR AMBANYA FOR THE LANDLORD AND JOSEPH NYILU THE TENANT IN PERSON.

HON. A MUMA

VICE CHAIR

