



Mburu v Mike Kibuchi Mwangi t/a Centre Limited & another (Tribunal Case E160 of 2022) [2023] KEBPRT 619 (KLR) (28 August 2023) (Ruling)

Neutral citation: [2023] KEBPRT 619 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E160 OF 2022
A MUMA, AG. CHAIR
AUGUST 28, 2023**

BETWEEN

ALFRED KIGOTHO MBURU APPLICANT

AND

MIKE KIBUCHI MWANGI T/A CENTRE LIMITED 1ST RESPONDENT

MWANGI 2ND RESPONDENT

RULING

A. Parties and Representatives

1. The applicant Alfred Kigotho Mburu is the tenant and rented space in Lydia Arcade Building (Suit premises) along Kenyatta Avenue Nakuru City for the business (hereinafter known as the ‘Tenant’).
2. The firm of Naomi Muriithi & Co. Advocates represents the Tenant in this matter. naomibosire254@gmail.com
The 1st Respondents Mike Kibuchi Mwangi T/A Centre Limited is the 2nd Respondent.
3. The 1st Respondents Mwangi is the is the Landlord and rented out space to the tenant for the business in the suit property (Hereinafter known as the ‘Landlord’)
4. The firm of Speline Ondande & Co. Advocates represents both the 1st and 2nd Respondent (Landlord) in this matter. sondandeadv@gmail.com

B. The Dispute Background

5. The tenant moved this tribunal by way of reference dated 29th November 2022 and a Notice of Motion application of even date. The tenant sought among others, orders to restrain the Landlord from harassing or evicting him from the suit premises and an Order to direct the Landlord to open the suit premise and return the goods and tools of trade belonging to the Tenant.



6. Vide an Order of this Tribunal issued on 1st December 2022, this honourable Court restrained the Landlord and/or his agent from harassing or evicting the tenant from the suit premises and directed him to open the suit premises and return the goods and tools of trade belonging to the Tenant.
7. On 10th January 2023, the Landlord moved this honourable Court by way of a Notice of Motion Application dated 10th January 2023, under a certificate of urgency of even date.
8. He sought among others the following Orders: that the Tribunal be pleased to stay its Orders issued on 1st December, 2022; and that the matter be dismissed for want of jurisdiction.
9. This Tribunal in consideration of the said Application by the Landlord granted prayers 1 & 2, which Orders certified the matter as urgent and stayed the Orders issued on 1st December 2022 pending inter-partes hearing of the Landlord's Application. The Tribunal further directed that the Landlord serve upon the Tenant for hearing on 12th January 2023.
10. The Tenant filed a Replying Affidavit dated 19th April 2023.
11. On 24th April 2023, the Landlord filed a Notice of Preliminary Objection dated 2023.

C. Tenant's Case

12. The Tenant admits that their tenancy agreement expired on 30th April 2022.
13. He deponed that the 1st and 2nd Respondent declined to extend and/or renew the lease agreement and further declined to accept rent.
14. He further states that he was not aware that his goods and tools of trade had been auctioned by the auctioneers, that he was never served with a proclamation notice.

D. 1st & 2nd Respondents' Case

15. The Landlord deponed that tenant on several occasions defaulted on payment of rent leading to distress of rent by various auctioneers.
16. It is their case that the lease agreement between themselves and the Tenant expired on 30th April 2022 and that the same have neither been extended nor renewed.
17. They further deposed that at the time of filing of an application dated 29th November, 2022 by the tenant, there was no tenancy relationship between themselves and the tenant.
18. He further on the foregoing basis averred that the Tribunal does not have requisite jurisdiction to hear and determine the issues in the matter.

E. Jurisdiction

19. There is dispute as to the jurisdiction of this Court. The landlord

F. Issues for Determination

20. The main issues for determination are: whether the Application by the Landlord dated 10th January 2023 and the Preliminary objection dated 24th April 2023 are merited.
21. It is in the contention of this Tribunal that, before ventilating any issues that lend themselves for determination, this Tribunal dispenses first with the Preliminary Objection raised by the Landlord.



G. Analysis And Findings

22. The main issue in contention before this Tribunal is whether the distress by the landlord was conducted lawfully as per the provisions of cap 301.
23. The tenant approached this Tribunal seeking protection against the unlawful distress by the landlord.
24. This Tribunal issued orders on 1st December 2022, whereby they restrained the Landlord and/or his agent from harassing or evicting the tenant from the suit premises and directed him to open the suit premises and return the goods and tools of trade belonging to the Tenant.
25. On 10th January 2023, upon issuance of the said orders, the Landlord moved this Court by way of a Notice of Motion Application dated 10th January 2023, under a certificate of urgency of even date seeking to stay aside the orders issued on 1st December.
26. This Tribunal in consideration of the said Application by the Landlord granted prayers 1 & 2, which Orders certified the matter as urgent and stayed the Orders issued on 1st December 2022 pending inter-partes hearing of the Landlord's Application. The Tribunal further directed that the Landlord serve upon the Tenant for hearing on 12th January 2023.
27. In the case before me, the Landlord contends that the Tribunal lacks jurisdiction to handle this matter on the basis that it pronounced itself on the 9th February 2023. Further, that the Tribunal is functus officio having determined the said application dated 10th January 2023.
28. The begging question therefore before me is whether this Tribunal issued a final decision on 9th February 2023 over the Landlord's Application dated 10th January 2023. This is the basis of the preliminary objection at hand.
29. To restate the aforementioned facts which is already in the mind of this Tribunal and for emphasis, this Honourable Tribunal in deed issued some orders over the Landlord's Application dated 10th January 2023. However, the said orders were only meant to be operative during the pendency of hearing of the same Application. Put differently, the decision of the Tribunal did not dispense with finality merits of the matters in issue raised in the Landlord's Application.
30. In fact, from the proceedings of this Honourable Tribunal on 9th February 2023, the Court in observing that the Tenant had been removed from the premises directed that Tenant do file statement of damages, ordered that an inspection report be availed to the parties and that hearing be fixed for 20th March 2023. This is a clear proof that the matter in issue was yet to be determined by the Tribunal.
31. In utter disregard of these orders, on the morning of the inspection, it seems the landlord removed the tenant's goods and all their records and statements of accounts.
32. As a result, the tenant is unable to file for damages since they do not have their records with them.
33. 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;”



34. 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.”
35. 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”
36. 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.
37. 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.
38. 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 at 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.
39. 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 did not heed to the orders of the Tribunal restraining them from levying distress. Additionally, they proceeded to cart away the goods of the Tenant despite there being orders barring them from doing so.
40. 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 disregard by the landlord of this Tribunal’s orders and frustrating the operations of the tenant.
41. In light of the foregoing the Tribunal awards them General Damages of Kshs39,000.00 being the equivalent of rent for 5 months.
42. Additionally, I find that the tenant is entitled to a refund for the costs incurred during the inspection being Kshs. 37,800.00
43. Having made the above findings, I now make the following orders;



H. Orders

- a. The Tenant's Application dated 22nd November 2022 is hereby partially allowed in the following terms;
- b. The tenant is awarded General Damages of Kshs. 39,000.00 payable by the landlord in 30 days.
- c. The landlord shall also refund the tenant the costs incurred during the inspection being Kshs. 37,800.00 also payable in 30 days.
- d. Each party shall bear their own Costs.
- e. Reference closed

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. MUMA THIS 28TH DAY OF AUGUST 2023 IN THE ABSENCE OF PARTIES.

HON. A MUMA

MEMBER

