



**Mint Holdings Limited v Josem Trust Limited (Tribunal Case  
E1075 of 2022) [2023] KEBPRT 1331 (KLR) (12 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1331 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E1075 OF 2022  
CN MUGAMBI, CHAIR  
OCTOBER 12, 2023**

**BETWEEN**

**MINT HOLDINGS LIMITED ..... TENANT**

**AND**

**JOSEM TRUST LIMITED ..... LANDLORD**

**RULING**

**Introduction**

1. The Landlord's application dated 16.11.2022 seeks orders directing the tenant to vacate Apartment No. 6 on the premises known as L.R. No. 209/8181, an order directing the tenant to pay the Landlord rent arrears in the sum of Kshs. 3,202,945/= and a further order that the OCS, Capital Hill police station do ensure compliance with the orders.
2. The tenant's application dated 21.7.2023 seeks orders that the ruling in the landlord's application be arrested that the tenant should not be evicted from the suit premises and that the area OCS does oversee the enforcement of the court orders.

The Landlord's deposition in support of its application dated 16.11.2022

3. The said affidavit may be summarized as follows hereunder:-
  - a. That the tenancy between the parties herein is a protected tenancy
  - b. That the tenant has not been paying rent at all.
  - c. That the landlord's Advocates on record issued a notice to vacate the suit premises which notice was to take effect on 31.8.2022 but the tenant refused to vacate the premises on the said date, is still in occupation and continues to refuse to pay rent.
  - d. That the tenant owes the landlord rent arrears in the sum of Kshs. 3,202,945/=.



- e. That the tenant has not filed a reference in objecting to the notice to terminate tenancy, a position that was confirmed by the Tribunal in writing.

#### **The Tenant's Replying affidavit**

- 4. The tenant's replying affidavit sworn by Ms. Samson Keengu may be summarized as follows hereunder:-
  - a. That the application by the landlord has been brought in bad taste, prematurely and ought to be dismissed with costs to the tenant.
  - b. That the rent has always been paid and communication kept open wherein payments were delayed due to unavoidable circumstances.
  - f. That the amounts claimed to be outstanding are exaggerated and the much that is owing has been paid anyway.
  - g. That the landlord cannot claim to have issued a termination notice whereas it continues to receive rent payments as such actions depict an implied tenancy extension and the latest payment of the rent is clear indication of the same.
  - h. That the purported notice is illegally and improperly issued.
  - i. That the purported "eviction" notice is not served on anyone and it never reached the tenant.
- 5. The landlord has filed a supporting affidavit wherein it has been deposed that the tenant who as at May 2023 owed rent in the sum of Kshs. 3,557,091/= had earlier on committed itself to vacate the premises if it failed to pay the outstanding rent arrears.

The Tenant's depositions in support of its application dated 21.7.2023

- 6. The tenant's aforesaid affidavit may be summarized as follows hereunder:-
  - a. That the tenant has always and faithfully paid rent as and when the same falls due.
  - b. That the landlord has instructed its agents to levy distress for rent and evict the tenant.
  - c. That the tenant who currently pays rent at the monthly rate of Kshs. 100,000/= has been the landlord's tenant for the last twenty five years.
  - d. That the tenant has cleared the rent arrears owed and now disputes the landlord's story that he owes any money.
  - e. That the landlord claims to have issued a termination notice while he continues to receive rent which implies a tenancy extension.
  - f. That the tenant has annexed a schedule of all the rents paid up to date.
- 7. That none of the claimed outstanding amounts is owed and if there was any, the same has been agreed upon and paid, the tenant, though, is ready and willing to pay what it rightfully owes the tenant.

#### **The Landlord's replying affidavit to the application dated 21.7.2023**

- 8. The Landlord's replying affidavit may be summarized as follows hereunder:
  - a. That the averments contained in the tenant's affidavit are full of falsehoods and untruthful.



- b. That the Applicant is untrustworthy and unreliable tenant who always defaults in rent payment forcing the landlord to engage auctioneers to levy distress for rent.
- c. That the parties have not been in any negotiations as the tenant would have the Tribunal believe.
- d. That the tenant has not come to court with clean hands, he has not done equity.
- e. That as at 8.9.2023, the tenant owed rent in the sum of Kshs. 3,736,444/= which equates to over three years rent.
- f. That a cheque of Kshs. 300,000/= issued by the tenant was dishonoured by the bank.
- g. That the tenant had undertaken to vacate the suit premises by 31.10.2020 if it failed to clear rent arrears amounting to Kshs. 1,570,620/=.

### **Analysis and determination**

9. The issues that arise for determination in the two applications are in my view the following:-
  - a. Whether the landlord is entitled to orders to evict the tenant on account of the notice to terminate tenancy allegedly served upon the tenant.
  - b. Whether the tenant is in rent arrears?
  - c. Whether the tenant is entitled to the orders of injunction sought in its application.
  - d. What orders ought to be made in the circumstances of this case?

### **Issue A**

10. Although the landlord depones that it served the notice of termination of tenancy upon the tenant, I do note from the affidavit of the landlord that the said notice has not been annexed to the said affidavit. From a perusal of the correspondence, I note that the tenant was allegedly served with the notice to terminate tenancy on 13.7.2022 and an affidavit of service sworn by Charles Ngugi Advocate depones to the fact that the service of the notice was effected upon M/S W. M. Njagi Associates on behalf of the tenant. Although the affidavit states that the said firm of Advocates duly stamped the tenant's copy of the notice, the stamped copy has not been filed in court. I am taking the trouble to interrogate the affidavit of service because the tenant has categorically denied receiving the same and in this instance, the only finding I can make is that from the affidavit of service, service was effected upon the firm of M/S W.M. Njagi & Co. Advocates and not the tenant.
11. In regard to service of court processes upon a corporation, and which the tenant appears to be from a plain reading of the pleadings, Order 5 Rule 3 of the [Civil Procedure Rules](#) provides as follows:-
  3. Subject to any other written law, where the suit is against a corporation, the summons may be served;
    - (a) on the secretary, director or other principal officer of the corporation.
    - (b) if the process server is unable to find any of the officers of the corporation mentioned in Rule 3(9)-
      - (i) by leaving it at the registered office of the corporation
      - (ii) by sending it by prepaid registered post or by a licensed courier service provider approved by the court to the registered postal address of the corporation or



- (iii) if there is no registered office and no registered postal address of the corporation, by leaving it at the place where the corporation carries on business or;
  - (iv) by sending it by registered post to the last known postal address of the corporation.
12. The filed affidavit of service forming part of the landlord's documents does not seem to show that the process server complied with the requirement as far as service upon body corporates are concerned. In view of the clear provisions of the law and the denial by the tenant that it ever received the notice to terminate tenancy, I am not convinced and I do find that the tenant was not served or was not properly served with the notice to terminate tenancy.
13. I also note that the notice to terminate tenancy is said to have been dated 23.5.2022 and allegedly served upon the tenant on 13.7.2022. The effective date of the notice could only have been 1.10.2022 and not 1.8.2022 as stated by the landlord. Why so? Section 4(4) of Cap 301 provides as follows in this regard;
- “No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party as shall be specified therein. Two months from 13.7.2022 would place the effective date to 1.10.2022. But having found that the notice was not properly served, this observation is moot.”
14. Consequently, on this issue, I do find that the notice of termination allegedly served upon the tenant cannot be the basis of seeking to evict the tenant, the same having not been served.

#### **Issue B**

15. The underlying issue throughout the proceedings is the issue of the unpaid rent to the landlord. In the notice of motion dated 16.11.2022, the landlord has stated that the tenant is in rent arrears amounting to Kshs. 3,302,945/= and in the affidavit sworn on (undated) in response to the tenant's application, the landlord has deponed that the outstanding rent is Kshs. 3,735,444/= not a small figure in rent arrears by any means. The tenant on its part has denied owing any rent arrears and has stated that all rent arrears where any existed, have been paid. The tenant has annexed a rent payment schedule which shows rent payments in varying figures.
16. In the absence of a rent book as required under Section 3(3) of Cap 301, I am unable at this interlocutory stage to reconcile the rent figures being shared by both parties. It is not easy to state with clarity what rent is owed given the rent statements by the parties.
17. I appreciate the enormity and sensitivity of this dispute as if indeed it may turn out to be true that the landlord is owed rent, then the rent continues to accrue and on the other hand if it eventually turns out that the tenant does not owe rent, then there lies the danger of a distress for rent for no mean figures. In view of this observation, I will make the following orders:-
- a. That the parties will prepare and file their complete accounts of rent within the next fourteen (14) days and exchange the same within the same period.
  - b. That the tenant will continue to pay rent to the landlord.
  - c. That the reference by the landlord on the issue of RENT will be heard fully within THIRTY days from the date of this ruling.
  - d. That in the meantime, the landlord is restrained from evicting the tenant or in any manner interfering with the tenancy.
  - e. This matter will be mentioned on 27.10.2023 to confirm compliance with order 1 above.



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12<sup>TH</sup> DAY OF OCTOBER 2023**

**HON. CYPRIAN MUGAMBI - CHAIRPERSON**

**12. 10.2023**

In the presence of;

Mr. Mwangi for the landlord

Ms. Bundi for the tenant

