



Nyengenyne t/a Jim Ojiambo Advocates v Karanja t/a Teludas Investments (Tribunal Case E1133 of 2023) [2024] KEBPRT 694 (KLR) (Civ) (24 April 2024) (Ruling)

Neutral citation: [2024] KEBPRT 694 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E1133 OF 2023
CN MUGAMBI, CHAIR
APRIL 24, 2024**

BETWEEN

JAMES ODHIAMBO NYENGENYE T/A JIM OJIAMBO ADVOCATES TENANT

AND

TERESIA KARANJA T/A TELUDAS INVESTMENTS LANDLADY

RULING

1. The Tenant's Application dated 15.11.2023 seeks orders that the Landlord immediately restores the Applicant's electricity and internet connection in default of which the Applicant be allowed to restore his internet connection and electricity at the Respondent's cost. The Tenant has also sought an order that the Landlord be prohibited and restrained from interfering with the Applicant's internet wiring and electricity at the demised premises known as House No.B2 & B3 Miranje Estate. The Applicant has also sought police assistance through the OCS, Ruai police station.

The Tenant's depositions

2. The Tenant's case is that he entered into a lease agreement for the premises known as HOUSE NO. B2 & B3 MIRANJE ESTATE (hereinafter the suit premises) on or about the month of July, 2023 and therein set up his law firm business, at an agreed rent of Kshs. 28,000/= per month.
3. The Tenant has also deposed in his affidavit that he contacted Zuku network for his internet connection and further that on or about mid October 2023, the Respondent fixed a notice at the suit premises indicating that the Respondent did not allow for any other internet providers apart from the Respondent.



4. The Tenant has further deponed that on 14.11.2023, the Respondent unlawfully disconnected the Tenant's electricity and destroyed cable wires for the Tenant's acquired internet services totally paralyzing the Tenant's virtual proceedings and online research activities for his law firm.
5. The Tenant has also deponed that it is not in any rent arrears and is therefore entitled to enjoy his tenancy in the suit premises.
6. It is also deponed by the Tenant that the tenancy between the parties herein is a controlled tenancy and therefore governed by the provisions of Ca 301 of the Laws of Kenya.

The Landlord's depositions

7. The Landlord has deponed in its replying affidavit sworn by Mr. Joseph Munyiri that the suit premises were residential houses which the Tenant converted to business premises.
8. It is deponed by the Respondent that the Tenant took possession of the suit premises in October, 2023, but refused to sign/execute a lease agreement.
9. The Respondent has also deponed that the entire estate where the suit premises is situated is supplied with internet connectivity and proper cable conduits have been established and it was communicated to the Tenant at the very outset that the Landlord does not allow Tenants to bring cables at the premises as they deface the beauty of the premises.
10. The Respondent has deponed further that it did not allow Zuku network to access its property and the Tenant has illegally granted a right of entry to the said internet provider.
11. The Respondent in its affidavit has denied disconnecting the Tenant's electricity supply and the photos of disconnected cables do not touch on the demised premises.
12. The Respondent admits to removing cables that had been placed loosely and hanging along the corridors of the premises and which had been fixed without the authorization of the Landlord.

Analysis and determination

13. The issues that arise for determination in this Application are, in my view, the following:-
 - a. Whether the Tenant illegally converted the suit premises from Residential to a business premises.
 - b. Whether the Tenant is entitled to the orders sought in his Application.

Issue A: Whether the Tenant illegally converted the suit premises from Residential to a business premises.

14. It is the Tenant's case that in July 2023, he took up House Nos. B2 and B3 and set up his law firm therein. It is the Tenant's case also that the Landlord had all along been aware that the Tenant was running the business of a law firm in the suit premises. The Landlord is of the contrary view that the Tenant illegally converted the suit premises from Residential to Commercial business. Although the Landlord depones that the Tenant refused to execute a lease agreement for the premises, she has not annexed any draft lease agreement to her affidavit. The Landlord has not also annexed any letter forwarding the lease agreement to the Tenant for his signature. Consequently, on the basis of the evidence provided before the Tribunal, there is really nothing to suggest that there was any written draft lease between the parties and it is therefore difficult to conclude that the suit premises was leased for any other purpose other than the law firm business.



15. Consequently, the Landlord has not demonstrated that the Tenant had initially taken up a residential tenancy as opposed to a business tenancy.

Issue B: Whether the Tenant is entitled to the orders sought in his Application

16. The dispute between the parties seem to have been triggered by the alleged disconnection of the Tenant's electricity and internet connection and not the alleged change of user of the suit premises. The Landlord has denied disconnecting the Tenant's electricity and in responses to the Landlord's deposition, the Tenant at paragraph 18 of his further affidavit only seeks to reiterate the contents of his further affidavit. I also note that the Tenant at paragraph 14 of his supporting affidavit, depones to occasional disconnection of electricity to his premises. I do not find the Tenant's claim to the disconnection of his electricity to be firm and more especially on the face of the Landlord's denial that it has ever disconnected the electricity.
17. The Landlord has however admitted to interfering with the Tenant's internet connection on the basis that the internet cables were hanging loosely on the corridors and that they had been fixed therein without the authorization of the Landlord. The Landlord also attributes its interference with the Tenant's internet cables to the reason that it did not authorize Zuku network to enter into its premises and also that the Tenant's cables deface the beauty of the premises.
18. The question that begs to be answered is whether the Tenant was entitled to connect his own internet using his own providers or whether the Tenant was to use the Landlord's infrastructure in obtaining his internet connectivity. Tied closely to this question, is the question whether the Tenant required the Landlord's authorization to engage other internet providers for his internet connectivity?
19. The parties herein having not executed any formal lease agreement and the Landlord having not even annexed a draft lease agreement forwarded to the Tenant for their execution, the relationship between the parties herein is governed by an unwritten lease agreement and is therefore a controlled tenancy. In these circumstances, there is no material placed before the Tribunal on the basis of which the Tribunal would find that the Tenant was barred from independently seeking its own internet provider. There is further no material placed before the Tribunal to suggest that the Tenant was only to use, and exclusively so, the infrastructure provided by the Landlord for its internet connection.
20. The Landlord's contention that the Tenant's loose connections are interfering with the beauty of the suit premises has not been demonstrated. Under the Schedule 6 section 3 of Cap 301, the Tenant is entitled to have the quiet enjoyment of the demised premises provided he complies with express or implied covenants. I am not persuaded that there is any implied or express covenant in this matter prohibiting the Tenant from hiring its own internet connection using a provider other than one recommended by the Landlord. I further do not find any basis upon which the Landlord herein can object to the provision of internet services to the Tenant by Zuku as the Landlord is not even saying she is in competition with Zuku for the provision of such services.

Disposition

21. In view of the above findings, I will allow the Tenant's Application in terms of the following orders;-
- a. That the Landlord is directed to restore the Applicant's electricity (if she has already not done so) and the internet connection forthwith and in any event within the next three (3) days of this Ruling failing which the Tenant shall be at liberty to reconnect the same at the Landlord's expense.



- b. That the Landlord is restrained from interfering with the Tenant's electricity supply and from interfering with the Applicant's tenancy activities in whatsoever manner at the demised premises known as Hosue No. B2 and B3 Mirange Estate pending the hearing of the Reference.
- c. That the OCS Ruai police station do assist in enforcing compliance with the orders issued herein.
- d. That the Landlord will bear the costs of this Application.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH DAY OF APRIL, 2024.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Odhiambo for the Tenant and in the absence of the Landlord and Counsel

FURTHER ORDER

Matter to be mentioned on 14.05.2024 for further directions.

