



**Mutisya v Kariuki & another (Tribunal Case E137 of 2023)  
[2023] KEBPRT 1304 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1304 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E137 OF 2023  
P MAY, MEMBER  
OCTOBER 19, 2023**

**BETWEEN**

**STEPHEN M MUTISYA ..... APPLICANT**

**AND**

**FRANCIS WARUINGI KARIUKI ..... LANDLORD**

**AND**

**JULIUS MUTHOKA MUINDI ..... AGENT**

**RULING**

1. The tenant approached the Tribunal through filing the complaint dated 2<sup>nd</sup> June, 2023 challenging the landlord's actions of threatening to evict him. Contemporaneously, the tenant filed an application seeking for orders of temporary injunction against the landlord.
2. The gist of the tenant's application is that the tenant contends that he entered into a lease with the landlord which is still in force and that he had paid all the rent due. He stated that he had also paid deposit and undertaken renovations with a legitimate expectation that the landlord would grant him quiet and peaceful possession.
3. The application was opposed vide the Replying Affidavit sworn by the agent on behalf of the landlord on 4<sup>th</sup> July, 2023. The landlord took a multi-pronged approach in attacking the application. He stated that the tenant misled the Tribunal by failing to disclose material facts.
4. It was the landlord's contention that the tenant took occupation of the demised premises but had not commenced their intended business operations. The landlord further stated that the tenant had midstream intimated that he wanted to transfer the lease to a new tenant so that they could recoup the money they had spent. He stated that he had required the tenant to sign a new lease agreement to effect this but the tenant never executed the same thus he leased out the premises to a new tenant.



5. The tenant filed a further affidavit in response to the replying affidavit. He stated that he was evicted without following the due process. He therefore claims that he is entitled to damages.

### Analysis

6. The parties after filing the affidavits asked the Tribunal to consider the same and deliver a ruling. I have perused the pleadings filed and wish to proceed as follows:
7. I am required to determine whether the tenant's prayers for refund and damages is merited. The parties have from the onset submitted to the jurisdiction of the Tribunal thus it is not in dispute that the nature of tenancy is controlled.
8. Section 4(2) of [Cap. 301](#), Laws of Kenya stipulates that a Landlord who wishes to terminate a controlled tenancy or to alter to the detriment of the tenant any term or condition in or right or service enjoyed by the tenant under such a tenancy shall give notice to the tenant in the prescribed form.
9. Further Section 7(1)(b) of the said [Act](#) provides one of the grounds for seeking to terminate tenancy by a landlord to be a tenant's default in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable.
10. The landlord has admitted to dispossessing the tenant but it is apparent that he failed to issue the notice as stipulated under the law. Section 4 of [Cap 301](#) is couched in mandatory terms thus it should always be complied with unless the parties waive the requirements set therein. This is not the case in the present circumstances.
11. The landlord has a statutory duty of issuing rent receipts and keeping a rent book. There is no rent book that has been adduced to prove the rent payment or default by the landlord. The landlord is the author of his own misfortune by failing to keep a rent book.
12. Section 107 (1) of the [Evidence Act](#), Cap. 80 Laws of Kenya provides as follows:-  
“(1)Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”.
13. Section 108 of the same [Act](#) provides as follows:-  
“The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side”
14. The tenant has attached receipts to prove the renovations work that he undertook and the resultant costs. I am persuaded that he is entitled to the damages sought owing to the circumstances set above.
15. As regards costs, the same are in the Tribunal's discretion under Section 12(1)(k) of [Cap. 301](#), Laws of Kenya but always follow the event unless for good reasons otherwise ordered. I have no reason to deny the tenant costs of the complaint and application.
16. In conclusion, the final orders which commend to me in this case are:-
- (a) The tenant's complaint dated 2<sup>nd</sup> June, 2023 succeeds and the landlord is ordered to refund the goodwill paid of Kshs. 70,000/= and the renovation costs of Kshs. 65,000/= both totaling to Kshs. 135,000/=.
  - b. The tenant is awarded costs assessed at Kshs. 25,000/=.
  - c. This ruling settles the both the application and complaint dated 2<sup>nd</sup> June, 2023.



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF OCTOBER 2023.**

**HON. P. MAY**

**MEMBER**

**19.10.2023**

In the absence of the parties.

