



**Anchor Safety & Equipment Limited v Autolitho Limited (Tribunal Case
E091 of 2023) [2024] KEBPRT 398 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 398 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E091 OF 2023
A MUMA, AG. CHAIR & J ROP, MEMBER
APRIL 12, 2024**

BETWEEN

ANCHOR SAFETY & EQUIPMENT LIMITED APPLICANT

AND

AUTOLITHO LIMITED RESPONDENT

RULING

A. Parties And Representatives

1. The Applicant, Anchor Safety & Equipment Limited is the occupant of the Respondent's Property situated in Industrial Area within Nairobi County (hence the "Tenant").
2. The firm of Yambasa & Co. Advocates represents the Applicant in this matter.
3. The Respondent, Autolitho Limited, is the owner of the suit property and (hence the landlord).
4. The firm of Okao & Co. Advocates represents the Respondent in the matter.

B. Background Of The Dispute

5. The tenant moved this tribunal vide a reference and application dated 23rd January 2023 seeking orders that the application be certified as urgent, the court to set aside proclamation notice dated 20th January 2023, the court to issue a temporary injunction restraining the Respondents, its agents or servants from evicting the Applicant from his premises pending the hearing and determination of the matter.
6. The Tribunal issued orders dated 30th January 2023 as follows;
 - i. The proclamation Notice dated 20th January 2023 was set aside pending interpartes hearing
 - ii. A temporary injunction was issued restraining the Respondent, its agents or servants from evicting the Respondent from the premises pending hearing and determination of the suit.



7. In response, the Landlord filed a Replying Affidavit dated 17th February 2023 stating that the Tenant has outstanding rent arrears for the months of June-October 2022 totaling to KShs. 560,622.00.
8. The court heard the matter and the same was settled on the terms that the Tenant was to pay KShs.150,000 from 1st June 2023 on or before the 15th of every month, until they set off all the arrears then the rent reverts back to KShs.117,000 in default of which the Landlord had the liberty to levy distress for the total amount as well as to immediately apply for eviction orders.
9. The tenant then filed a Notice of Motion Application dated 8th August 2023 seeking orders that the application be certified as urgent, the Honourable Tribunal compel the Landlord to issue the Tenant with a parking space as contained in the Tenancy agreement, and a restraining order be issued to the Landlord to restrain the tenants from blocking and parking in front of the Tenant's business premises.
10. The tribunal gave orders dated 24th August 2023 for the application to be served for hearing on 21st September 2023, the Tenant to file and serve the Tenancy Agreement before then, the tenant to file an affidavit of service.
11. In response, the Landlord filed a Replying Affidavit dated 3rd October 2023.

C. The Tenant's Claim

12. The tenant claims that, the Landlord has denied it parking space within the premises despite having an allocation for it in the tenancy agreement.
13. The tenant further claims that there is continued blockage of the Tenant's business premises by other tenants which incident has been brought to the attention of the Landlord with no action being taken.

D. The Landlord's Claim

14. It is the Landlord's case that the parking space was not factored in the Lease Agreement.
15. The Landlord further claims that it has other tenants and none is provided with any parking space and anybody who arrives first gets to park his or her car.

E. List Of Issues For Determination

16. I have carefully perused the material placed before this court by the parties and it is my considered opinion that the following issues fall for determination:
 - a. Whether the tribunal should grant the orders sought for a parking space?

H. Analysis & Determination

17. The issue at hand emanated in the course of the tenancy relationship and it involves a controlled tenancy. Therefore, based on Section 12 of the Act the Tribunal has jurisdiction as follows;

“In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit.”

a. Whether the Court should grant the orders sought for a parking space?.

18. The Tenant claims that the Landlord has denied it parking space contrary to what the lease agreement provides for; therefore, seeking for orders compelling the Landlord to issue the Tenant with parking



space and an order to the tenant restraining the other tenants from blocking the Tenant's business premises.

19. Section 107(1) of the Evidence act states that;

“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.”

20. In the instant application, the Tenant has provided the Honourable tribunal with a letter dated 20th July 2023 from their counsel addressed to the Landlord's counsel passing the complaint that it has no access to parking space and is forced to seek alternative means to that regard.

21. In the Tenant's written submissions dated 26th November 2023, reference is made to the Application dated 24th January 2023 where the Tenant attached photos showing obstruction of the business premises.

22. The court had given an order dated 24th August 2023 in which the Tenant was required to file and serve the Tenancy Agreement which has however not been done.

23. The Tenancy relationship between the parties herewith is guided by a tenancy agreement and being the document referenced by both parties it ought to be provided to the court by the aggrieved party in line with the Evidence Act.

24. In the case of *Jawabu Agro Supplies Limited v Inspector General of Police & 3 others* [2017] eKLR, the court stated that;

“The law is that he who alleges must prove and in cases of this nature the petitioner must prove its case on a balance of probabilities. If the petitioner fails to do so, its case must fail since mere averments do not amount to proof unless the same are admitted.”

25. In line with Section 107 and Section 109 of the Evidence Act which stipulates that; “The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person”, the Tenant has not provided sufficient evidence proving that the Tenancy Agreement provided for parking space.

26. Therefore, having analyzed the evidence, it is this Tribunal's view that the Tenant has failed to prove their case on a balance of probabilities.

I. Orders

27. The upshot is that the Tenant's Application dated 8th August 2023 is hereby dismissed with no order as to costs.

RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 12TH DAY OF APRIL 2024 IN THE PRESENCE OF OKAO FOR THE LANDLORD AND MBOGO FOR THE TENANT.

HON. A MUMA - Ag. CHAIR/MEMBER

HON JACKSON ROP - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

