



Mbura v Gikonyo (Tribunal Case E751 of 2023)
[2023] KEBPRT 1135 (KLR) (Civ) (29 November 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1135 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E751 OF 2023
M MAKORI, MEMBER
NOVEMBER 29, 2023

BETWEEN

JOHN MAORE M MBURA APPLICANT

AND

CHARLES NGUGI GIKONYO RESPONDENT

RULING

1. The Applicant moved this Honourable Court vide application dated 8/8/2023 seeking orders against the Respondent/Landlord and with reference to the initial Lease Agreement dated 4/6/2018 and other terms agreed upon by the parties. The application was opposed vide a Replying Affidavit dated 29/8/2023 and sworn by Charles Ngugi Gikonyo.
2. The Respondent and Applicant had an intimation of varying the Rent Payment from Kshs 30,000/= to Kshs 40,000/= as intimated vide letters dated May 2023, 6th June, 2023 and one dated 21st June, 2023.
3. The Applicant vide a letter dated 6th June, 2023 indicated his willingness to enter into the new lease and continue with their business on the premises and continually pay rent as agreed upon by parties.
4. From the foregoing, the ultimate issue for determination is whether the application dated 8/8/2023 is meritorious in the circumstance and whether the doctrine of estoppel is applicable.
5. Before discussing the merit of the application I would like to discuss the applicability of the doctrine of estoppel between the parties herein. The doctrine of estoppel is crystalized in Section 120 of the [Evidence Act](#) which provides as follows:

When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his



representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

6. Lord Denman CJ in the English case, *Pickard v Sears* 112 ER 179 captured the doctrine as follows;

The rule of law is clear that where one, by his words or conduct, willfully causes another to believe in the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is precluded from averring against the latter a different state of things as existing at the time.

7. In *Serah Njeri Mwobi v John Kimani Njoroge* (2013) eKLR the Court of Appeal held that:

The doctrine of estoppel operates as a principle of law which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person.

8. From the totality of the documents filed, it is clear that the parties agreed to depart from the initial terms of Kshs 30,000/= per month and transition to Kshs 40,000/= per month.

9. The intention was first communicated by the Respondent and where the Applicant confirmed the terms and expressed his willingness vide a letter dated 6th June, 2023. A further follow up was done on 21st June, 2023 detailing the terms of the new lease the parties were to enter into. On 22nd June, 2023 the Applicant made an inquiry about the new lease as communicated and which lease is enclosed and marked CNG6.

10. It is my finding therefore that the doctrine of estoppel is applicable and the Applicant cannot be allowed to deny existence of terms changing of engagements between the parties in terms of rent payments.

11. The other issue that I must determine is whether the application dated 8/8/2023 is meritorious and ought to be granted in the circumstances. I wish to determine the issue as follows, the new terms of the lease are not imposed by the Respondent but are rather cumulate efforts of both the Applicant and the Respondent.

12. To my mind, the application dated 8/8/2023 is not brought in good faith as the applicant is just but making a turnaround from the terms that they had agreed to be bound by when couching the new lease agreement.

13. I wish to adopt what the superior court stated in the case of *Samuel Kipkori Ngeno & another v Local Authorities Pension Trust (Registered Trustees) & another* (2013) eKLR at paragraphs 9 and 12 as follows: -

9. A tenant's first and main obligation is to pay rent as and when it becomes due, for the Landlord has the right to an income from his investment...."

- "12 The temporary injunction sought in the present application is an equitable remedy at the court's discretion. He who comes to equity must come with clean hands. A tenant who is in huge arrears of rent is underserving the court's discretion. The court cannot be the refuge of a tenant who fails to meet his principle obligation of paying rent as and when it becomes due".

14. In the circumstances of this case and I order as follows; -

- i. The Applicant's Notice of Motion Application dated 8th August, 2023 is hereby dismissed with costs to the Respondents.



- ii. In exercise my discretion I grant the applicant 60 days from today within which to pay any outstanding arrears and/or vacate the premises failure to which the Respondent shall be at liberty to Levy for Distress for the outstanding arrears.
- iii. The OCS Eastleigh North Police Station to assist in compliance of these orders.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 29TH DAY OF NOVEMBER, 2023

HON. MIKE MAKORI (MR.)

MEMBER

In the presence of;

Mr. Wanjala for the landlord/Respondent

Mr. Kamau for the Applicant/Tenant

