



Nduti t/a Rift Valley Pinnacle Distributors Ltd v Mwangi (Tribunal Case E232 of 2023) [2024] KEBPRT 985 (KLR) (Civ) (12 July 2024) (Ruling)

Neutral citation: [2024] KEBPRT 985 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E232 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
JULY 12, 2024**

BETWEEN

HARUN KARUGA NDUTI T/A RIFT VALLEY PINNACLE DISTRIBUTORS LTD APPLICANT

AND

KIHARA MWANGI RESPONDENT

RULING

A. Dispute Background

1. The tenant/applicant moved this Tribunal vide a Reference under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishment\) Act](#) Cap 301 dated 20th December 2023 with a complaint that the landlord had locked up the business premises illegally on 9th December 2023 without any valid reason.
2. The tenant filed a Notice of Motion under a certificate of urgency dated 20th December 2023 seeking for orders that the matter be certified as urgent, that the respondent re-open the suit premises or the applicant be allowed to break into the premises with the assistance of the O.C.S Mau Narok Police Station, that the respondent be restrained from interfering with the tenant at the suit premises and that the costs of the application be provided for.
3. The tenant/applicant simultaneously filed a supporting affidavit of even date in which he deposes that he has been paying monthly rent of KES. 7,000 religiously. He has also sworn that on 9th December 2023, the respondent locked up the suit premises without any valid reason and that he believes that the respondent's intention is to frustrate the applicant in order for him to vacate the suit premises without considering the money invested in the business.



4. On 22nd December 2023, the Tribunal issued ex-parte orders directing that the matter be certified urgent, that the respondents re-opens the suit premises or the applicant be allowed to break into the premises and that the respondent be restrained from interfering with the tenancy pending hearing inter-partes.
5. The application is opposed vide a replying affidavit dated 17th January 2024 in which the landlord/respondent deposes that the tenant has arrears of 4 months from September 2023 to January 2024 totaling to KES. 28,000. The landlord also denied locking the suit premises and swore that the tenant is at liberty to vacate the suit premises subject to payment of the aforementioned rent arrears.
6. At the court hearing on 19th January 2024, the Tribunal directed that parties file and exchange rent account statements and evidence of rent payment and also allowed the tenant to re-enter the suit premises by breaking any padlock allegedly installed by the landlord and avail evidence of the alleged locking before the Tribunal.
7. At a subsequent court mention on 27th February 2024, the tenant stated that he had written to the landlord to allow him to vacate the suit premises. The Tribunal issued orders allowing the tenant to vacate the suit premises forthwith as the reconciliation of rent accounts was ongoing.
8. The tenant/applicant filed a supplementary affidavit dated 21st March 2024 in which he deposes as follows; -
 - i. That the tenant is not indebted to the landlord for the stated sum of KES. 28,000 and that he has been a tenant of the respondent since 2016 in which he paid one year rent in advance and as such, reconciliation of rent payment began from August 2017.
 - ii. That the tenant has annexed rent payment statements marked as “HKN 1” which shows amount of KES. 567,000 paid for 76 months ending 31st December 2023.
 - iii. That the total rent payable for the 76 months should be KES. 532,000 which showed that there was an advance payment of KES. 35,000.
 - iv. That the tenant has further explained the circumstances leading to the closure of the suit premises vide a letter dated 21st March 2024. A copy of the said letter is annexed as “HKN 2”.
 - v. That copies of receipts for rent payment are annexed as “HKN 3” together with Mpesa statements annexed as “HKN 4”.
 - vi. That the Mpesa statements show that the tenant paid rent amounting to KES. 483,000 vide Mpesa and the rent payment receipts show that the tenant paid a total sum of KES. 84,000 by cheque.
9. At a court mention on 24th April 2024, the tenant stated that he had vacated the suit premises on 22nd April 2024 at 3 pm. On the contrary, the landlord stated that the tenant had not vacated causing the court to issue break-in orders to the landlord if the tenant had locked the premises.
10. At a subsequent court mention, the tenant confirmed that he had vacated the suit premises as earlier stated.

B. Issues for determination

11. The following are the issues for determination; -



- a. How much rent arrears is owing to the landlord or how much money is owed to the tenant in excess payment?
 - b. Who shall bear the costs of the application?
12. The court directed the parties herein to file and serve their rent account statements together with evidence of rent payment in order to determine whether the landlord/respondent is owed rent or whether the landlord/respondent owes the tenant/applicant overpayment of rent.
13. The tenant complied by filing his rent account statements together with evidence of rent payment annexed as “HKN 3” and “HKN 4”.
14. The landlord on the other hand did not comply with the said orders but filed a statement of rent arrears document dated 20th May, 2024 in which he states that the tenant’s last rent payment was on 14th September 2023 and that the rent accrued is a total sum of KES. 56,000.
15. We note that the landlord has not filed any evidence of the said allegations as ordered by the court, therefore we shall consider the tenant’s filed statement of rent account together with the receipts filed. It is trite law that “he who alleges must prove”
16. Upon analysis of the tenant’s filed statements of rent accounts together with receipts filed, we find that the tenant made excess payment of KES. 35,000 as at December 2023 as the landlord did not avail any evidence to controvert the said position.
17. The court shall therefore order that the landlord/respondent refunds to the tenant the said amount which was paid in excess.
18. Under Section 12(1)(k) of Cap. 301, Laws of Kenya, costs of any suit before this Tribunal are in its discretion but always follow the event unless for good reasons otherwise ordered. We shall order costs of the application to the tenant/applicant.

C. Order

19. In conclusion, the following final orders commend to us; -
 - a. The application and reference dated 20th December, 2023 are spent in view of the tenant having vacated the suit premises with the Tribunal’s permission.
 - b. The landlord shall refund to the tenant/applicant the overpayment of KES. 35,000 in rent.
 - c. All interim orders are hereby discharged.
 - d. Costs of KES. 25,000 to the tenant/applicant.
 - e. File marked as closed.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY of JULY 2024.

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE



(PANEL MEMBER)

In the presence of:

Tenant/applicant present in person

Landlord/respondent present in person

