



**Vivan Kavosa t/a Iroko Twigs Hotel v Transzoia Teachers Enterprises Company Limited
(Tribunal Case E106 of 2023) [2024] KEBPRT 385 (KLR) (19 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 385 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E106 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
APRIL 19, 2024**

BETWEEN
VIVAN KAVOSA T/A IROKO TWIGS HOTEL TENANT
AND
TRANSZOIA TEACHERS ENTERPRISES COMPANY LIMITED ... LANDLORD

RULING

A. Dispute Background

1. The tenant/applicant moved this tribunal vide a Notice of Motion under a certificate of urgency dated 2nd November, 2023 wherein she sought the following orders; -
 - i. That the application be certified urgent.
 - ii. That the tribunal restrains the landlord/respondent and or agent from attaching proclaimed goods on the premises described as LR. No. 2116/2/XI Kitale town pending hearing and final determination of the application and main suit.
 - iii. That the costs of the application be provided for.
2. The application is supported by an affidavit of even date in which the tenant/applicant deposes as follows; -
 - i. That on 10th March, 2010, parties signed a lease agreement for the suit premises at a monthly rent of KES. 99,000 with a provision that the tenant puts up 12 units of self-contained furnished executive rooms at a cost of KES. 10,369,155, which the tenant did. A copy of the lease agreement is annexed as “VKL-1”.
 - ii. That parties agreed that the said lease would run for a period of 10 years and 8 months on a renewable basis.



- iii. That the 1st term of the lease expired and the tenant instructed his advocates to renew the lease which the landlord refused to execute.
 - iv. That on 26th October, 2023, the tenant received a letter from Real Appraisal LTD instructing Jomuki Auctioneers to levy distress for rent amounting to KES. 560,000 as opposed to KES. 260,000 which is due and owing. Copy of letter for distress and proclamation notice is annexed as “VKL-3(a)&(b).”
 - v. That the landlord instructed Real Appraisal LTD to collect rent from the tenant but at the same point, the manager of the landlord moved in and started collecting rent. A copy of the appointing letter, Petty cash voucher and M-Pesa statement is annexed as “4(a), (b) and (c) “.
3. On 8th November, 2023, this tribunal issued interim orders of injunction against the respondent pending hearing inter-partes.
4. The application is opposed vide a replying affidavit dated 25th January, 2024 in which the respondent deposes as follows; -
- i. That the tribunal cannot issue orders against the respondent as there exists no landlord/tenant relationship as the lease has expired and no renewal has been done.
 - ii. That the applicant has failed to disclose that she has never had a contractual relationship with the respondent since the lease executed was between Kennedy Muyundo T/A Vike Enterprises and not the applicant trading as Iroko Twigs to wit the said Kennedy Muyundo has rent arrears of KES. 260,000.
 - iii. That the applicant has failed to disclose that the alleged premises to which she seeks protection is habited by a hotel known as Mimi House -Two and not Iroko Twig and that her seeking for protection of the court when she has come to equity with unclean hands is in bad faith. Images of the new occupants Mimi House-Two is annexed “PM 1”.
 - iv. That the application herein is intended to frustrate the respondent and its tenants from exercising quiet possession of its premises.
 - v. That the application be dismissed with costs for being an abuse of the court process.
5. At the court hearing on 29th January, 2024, Counsel for the tenant stated that the tenant had paid KES.150,000 being part of the rent arrears which he admitted before this tribunal and that they had no problem paying the rent due. The tribunal ordered the tenant to pay the rent arrears.
6. The tenant/applicant filed a further affidavit dated 15th March, 2024 in which she deposes that she is indeed the tenant in the suit premises and that she has continued to abide by the directions of the court and had made a partial payment of KES. 150,000 being part of rent arrears.
7. The tribunal directed that the application be disposed of by way of written submissions and only the tenant complied by filing her submissions dated 5th February, 2024. We shall consider the written submissions filed by the tenant which we have duly considered.

B. Issues for determination

8. The following are the issues for determination; -
- a. Whether there exists a landlord/tenant relationship between the parties.



- b. Whether the tenant is entitled to the orders sought in the application dated 2nd November, 2023.
- c. Who shall bear the costs of the application?

Issue (a) Whether there exists a landlord/tenant relationship between the parties.

- 9. The respondent in his replying affidavit deposes that there exists no landlord/tenant relationship between the parties since the subsisting lease has expired and no renewal has been done. In addition, the respondent deposes in the same affidavit that the applicant herein has never had a contractual relationship with the respondent since the lease executed was between Kennedy Muyundo T/A Vike Enterprises and not the applicant trading as Iroko Twigs.
- 10. The issue of the leases notwithstanding, there is no denial that the applicant herein has been paying rent to the respondent as evidenced by the fact that the respondent has issued a proclamation notice dated 28th October, 2023 to the applicant on the basis of rent arrears.
- 11. In addition, the tenant has annexed a letter from the respondent to Jomuki Auctioneers dated 26th October, 2023 wherein the respondent directs the auctioneers as follows; -

“We hereby instruct you to levy distress for rent against our tenant IROKO TWIGS who operate a hotel on plot LR. NO. 2116/3/XI Kitale town. They are in arrears of KES. 560,000 that includes current month’s rent, accrued over 6 months.....”
- 12. The term “tenant” is defined under Section 2 of Cap. 301, to mean: -

“.....the person for the time being entitled to the tenancy whether or not he is in occupation of the holding and includes a sub-tenant”.
- 13. The term ‘Landlord’ is defined in the same legal provision to mean: -

“.....the person for the time being entitled as between himself and the tenant to the rents and profits of the premises payable under the terms of the tenancy”.
- 14. It is clear that the applicant has been paying rent to the applicant who has not denied receiving the rent. At the court hearing of 29th January, 2024, Counsel for the landlord admitted that the applicant is in arrears of KES. 460,000.
- 15. We find and hold that the relationship between the Applicant and the Respondent is a controlled tenancy according to CAP 301 Laws of Kenya and that there exists a landlord/tenant relationship between the parties herein.

Issue (b) Whether the tenant is entitled to the orders sought in the application dated 2nd November, 2023.

- 16. The applicant approached this tribunal seeking for orders that the respondent/landlord be restrained from attaching the proclaimed goods pending the hearing and determination of the application and suit.
- 17. The applicant/tenant in her supporting affidavit has sworn that she is indeed in rent arrears of KES. 260,000 and at the court hearing of 29th January, 2024, Counsel for the tenant/applicant states that the tenant had made a partial payment of KES. 150,000, which fact the applicant confirms in her further



affidavit dated 15th March, 2023. Counsel for the applicant/tenant further admits that the tenant is in arrears and that they have no problem with her paying up the remaining admitted rent arrears.

18. In the case of *Samuel Kipkori Ngeno & Another – vs- Local Authorities Pension Trust (Registered Trustees) & Another* (2013) eKLR at paragraphs 9 and 12, the Superior Court stated as follows: -

“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...”

“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”.

19. We note that the landlord has a right to rental income in accordance with Cap. 301, Laws of Kenya.
20. We find that the landlord is entitled to recover any rent in arrears in respect of the suit premises from the tenant and in default to use lawful means to recover the same. We therefore decline to allow the tenant’s application dated 2nd November, 2023 as the principles of injunction set in the case of *Giella Vs Cassman Brown & Co. Ltd* (1973) E.A 358 have not been met.

Issue (c) Who shall bear the costs of the application?

21. 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 respondent.

C. Orders

22. In conclusion, the following orders commend to us-
- a. The application dated 2nd November, 2023 is hereby dismissed.
 - b. The tenant/applicant shall pay rent arrears owing to the Landlord within the next 14 days and in default of payment thereof, the landlord shall be at liberty to use legal means to recover the same including and not limited to levying distress.
 - c. Costs of KES. 20,000 to the respondent.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19th DAY of APRIL 2024.

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE

(PANEL MEMBER)

In the presence of:

Miss Mukanda holding brief for Nakitare for tenant/applicant.

No appearance for the respondent/landlord.

