



**Elias Mwaura t/a Prime Soft Solutions Ltd v Esuchi & another (Tribunal
Case E046 of 2023) [2023] KEBPRT 600 (KLR) (8 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 600 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E046 OF 2023
A MUMA, AG. CHAIR
SEPTEMBER 8, 2023**

BETWEEN

ELIAS MWAURA T/A PRIME SOFT SOLUTIONS LTD APPLICANT

AND

DANIEL ESUCHI 1ST RESPONDENT

GEORGE MUNENE ITUGI T/A CLASSIC HOMES 2ND RESPONDENT

RULING

A. Parties and their Representatives

1. The Applicant Elias Mwaura T/A Prime Soft Solutions Ltd is the tenant and rented space on the suit premises located at Mama Ngina Phase 1 in Nakuru County. (hereinafter the “tenant”).
2. The Tenant appears in person in this matter.
3. The 1st Respondent Daniel Esuchi is the Landlord and the proprietor of the suit property. (hereinafter the “landlord”)
4. The 2nd Respondent George Munene is the agent appointed by the landlord and manages the property on his behalf. (hereinafter the “agent”)
5. The Firm of M/S J.A Simiyu & Co. Advocates represent the respondents in this matter.

B. The Dispute Background

6. The current suit was instituted by the tenant vide a Reference and a Notice of Motion Application under Certificate of Urgency dated 16th March 2023 under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301. The tenant was seeking orders restraining the



landlords from evicting, harassing and interfering with their possession of the premises. Additionally, the tenant wanted an order declaring the threats of eviction by the landlord declared null and void.

7. The Respondents have filed a Replying Affidavit dated 3rd April 2023 opposing the assertions by the Tenant.

C. Jurisdiction

8. The jurisdiction of this Tribunal is not in dispute.

D. The Tenant/Applicant's Claim

9. The Tenant filed a Reference and a Notice of Motion application under Certificate of Urgency and supporting affidavit dated 16th March 2023 seeking protection against the threats of eviction by the landlord.
10. The tenant has also filed another application dated 27th March 2023 seeking that the Court assist them in enforcing the orders issued by the Tribunal on 17th March 2023 restraining the landlord from evicting and harassing them.

E. The Landlord/Respondent's Claim

11. The Respondent filed a Replying Affidavit dated 3rd April 2023 opposing the assertions as raised by the tenant in their application.

F. Issues For Determination

- a. Whether the tenant is entitled to compensation for the renovations that were carried out?

G. Analysis and Determination

12. The tenant approached this Tribunal claiming that the landlord wanted to evict them on the basis that they had not been paying rent as agreed. The parties have a governing lease agreement which stipulates that the tenant is supposed to pay monthly rent at the rate of Kshs 50,000.00 per month.
13. The assertions that the tenant has not been meeting this obligation arose as a result of some constructions that were carried out on the premises. On the one hand, the tenant alleges that the landlord agreed to carry out the renovations while being financed by the tenant and thereafter the same would be deducted from rent. This would be done three months after occupation at the rate of Kshs 25,000.00 per month.
14. On the other hand, the landlord alleges that they agreed to the renovations but that the same were to be done at the expense of the tenant. They claim that the premises were tenantable as they were and the renovations were only done at the insistence of the tenant.
15. In an attempt to prove the agreement between themselves and the landlord, the tenant has annexed a letter addressed to the agent in which they informed them about the costs incurred in carrying out the repairs. They also highlighted that the landlord and the agent were fully aware of the ongoing renovations and that the landlord had supervised the repairs himself. The tenant additionally admits that the landlord is the one who undertook to provide the supplies and procured the labor.
16. The tenant further states that due to some financial constraints faced by the landlord, the landlord requested that the tenant commence the deductions later than after three months as had been agreed.



As such, the tenant claims that they began the deductions in March 2023. Prior to that, they had been paying rent at the full amount.

17. The landlord has in their replying affidavit claimed that the above assertions by the tenant are false. They admit that they undertook the repairs of the toilet with the help of the tenant but that the same was not for a substantial amount as claimed by the tenant.
18. They claim that the deductions by the tenant were not agreed upon by themselves and that the costs of renovation were to be incurred by the tenant.
19. I take note that the landlord has not annexed any proof before the Tribunal to prove their assertions. They have not annexed any correspondence to the tenant showing that they disputed the claims by the tenant as per the letter addressed to them and the agent.
20. I additionally observe that the tenant has provided excerpts of messages between themselves and the landlord in which the agent requests the tenant for receipts for assessment, asks them to pay full rent until they provide the said receipts and that the landlord is comfortable with deductions happening from the 6th month.
21. The landlord has additionally, in their replying affidavit, admitted that the tenant is only in arrears of Kshs 25,000.00 which I believe according to them accrued as a result of the deductions carried out by the tenant in the month of March 2023.
22. In light of the evidence produced by the tenant and the lack of any controverting evidence from the landlord, I am persuaded to agree with the tenant that they are entitled to compensation for the renovations carried out.
23. The tenant claims that the amount incurred for the renovations was Kshs 258,255.00. they have made the deductions of Kshs 25,000.00 for the months of March, April and May 2023. The Tribunal then ordered them on 15th May 2023 to pay full rent being Kshs 50,000.
24. On 15th June 2023 the Tribunal ordered them to pay Kshs 25,000.00 until the ruling date. As a result, the amounts owing to the tenant as at August 2023 should be Kshs 133,255.00.
25. In light of the above, I proceed to order as follows;

H. Orders

- a. The upshot is that the Tenant's Reference and Application dated 16th March 2023 are allowed in the following terms;
- b. The tenant shall pay rent at the rate of Kshs 25,000.00 per month until they recover the amount of Kshs 133,255.00 being the remaining costs incurred from the renovation.
- c. The tenant shall resume paying the full rent amount as and when it falls due being Kshs 50,000.00 in the month of February 2024.
- d. Each party shall bear their own Costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 8TH DAY OF SEPTEMBER 2023 IN THE ABSENCE OF THE TENANT AND WANUMA FOR THE LANDLORD.

HON A. MUMA

AG. CHAIR/MEMBER



BUSINESS PREMISES RENT TRIBUNAL

