



**Thuku v Wakaimba (Tribunal Case E059 of 2022)  
[2023] KEBPRT 472 (KLR) (Civ) (31 August 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 472 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E059 OF 2022  
A MUMA, AG. CHAIR  
AUGUST 31, 2023**

**BETWEEN**

**JESSE MWAURA THUKU ..... TENANT**

**AND**

**DAVID MBURU WAKAIMBA ..... LANDLORD**

**RULING**

**A. Parties and Representatives**

1. The Applicant (Jesse Mwaura Thuku) is the tenant who rented space on LR. No. 209/223/3 Nairobi for the business (hereinafter known as the 'tenant').
2. The Firm of Alakonya Associates Advocates represents the tenant in this matter (info@alakonyalaw.co.ke)
3. The Respondent (David Mburu Wakaimba) is the registered proprietor of the suit premises and the Landlord.
4. The firm of Maina Makome & Company Advocates represents the Landlord in this matter.

**B. The dispute background**

5. The dispute stems from a Ruling of this Honourable Tribunal delivered on 22<sup>nd</sup> November, 2022.
6. In the said Ruling, this Tribunal allowed the Landlord's Application dated 12<sup>th</sup> January 2022 wherein the Tenant was ordered to grant the Landlord vacant possession of the suit premises.
7. Consequently, and as a result of non-compliance by the tenant, the Landlord moved the Magistrates Court at Milimani through an application by way of Notice of Motion dated 6<sup>th</sup> February 2023 seeking



among other orders that Court be pleased to adopt orders of this Tribunal against the Landlord and that the same be converted to a decree of this Court for purpose of execution.

8. Aggrieved by the decision, the tenant moved this Tribunal on 14<sup>th</sup> February 2023 vide a Notice of Motion dated 14<sup>th</sup> February 2023.
9. The tenant in the said application sought among other Orders: that the Court be pleased to stay any execution proceedings pending hearing and determination of the application and that the court be pleased to set aside orders issued on 16<sup>th</sup> January 2023.
10. Through an Order dated 14<sup>th</sup> February 2023, this Honourable Tribunal granted prayers 1 and 3 certifying the matter as urgent and ordering a stay of execution of proceedings and orders issued on 16<sup>th</sup> January 2023 pending interpartes hearing.
11. Consequently, the Landlord sought to challenge Application by the Tenant and the Orders of the Tribunal therefrom. He filed an application dated 24<sup>th</sup> February 2023 seeking among other Orders, that this Tribunal's Orders granted to the Tenant on 14<sup>th</sup> February 2023 be set aside.
12. The Tribunal pronounced itself on the Tenant's Application dated 14<sup>th</sup> February 2023 vide a Ruling delivered on 20<sup>th</sup> June 2023. In the said Ruling the Tribunal ordered the Tenant to file their substantive documents as well as a proposal on how to offset their arrears in 7 days, including submissions.
13. As such all that is pending before the Tribunal is a determination on whether the proposal on offsetting the arrears by the tenant is viable.

#### **C. List of issues**

14. The issues raised for determination are as follows:  
Whether the proposal by the tenant on offsetting the arrears should be upheld?

#### **D. Analysis and Findings**

##### **Whether the proposal by the tenant on offsetting the arrears should be upheld?**

15. The Tribunal has already pronounced itself substantively on this matter before. I shall therefore proceed to address the pending issue in relation to the proposal by the tenant on how they intend to offset their arrears.
16. As per the orders of the Tribunal in the Ruling delivered on 20<sup>th</sup> June 2023 the Tenant was ordered to file a proposal on how they intend to offset their arrears.
17. In light of this the tenant has filed an Affidavit dated 4<sup>th</sup> July 2023 in which they admit to having arrears. As per their computation they claim that the same stand at Kshs. 2,009,000.00. Additionally, the tenant has requested to be allowed to offset the same in monthly installments of Kshs. 100,000.00 on or before the 25<sup>th</sup> day of each month with full payment guaranteed in one year from the payment of the first installment.
18. They intend that the same be offset independently from the monthly rent of Kshs. 80,500.00 which the tenant commits to pay as and when it falls due.
19. The landlord from the proceedings of 12<sup>th</sup> July 2023 informed the Tribunal that they require a substantial proposal with payment of at least 50% immediately.



20. Seeing as the amount of the arrears is quite substantial and would affect any business in addition the tenant has been loyal in meeting this proposal so far as much as the Landlord requires his Return on Investment this is a tenant who has come out clean unlike several here at the tribunal given an instalments proposal and payment plan of both the rent and arrears
21. I find that the proposal by the tenant seems reasonable. The tenant is also willing to have a sit down with the landlord in the event that this proposal is not acceptable to them and I would encourage them to consider the same should situation improve so that the repayment period reduces.
22. In my opinion, the admission by the tenant to being in arrears and the willingness to settle the same is a sign of goodwill in line with the maxim of equity he who comes to equity ought to come with clean hands. As such I am persuaded to allow their proposal and allow them to defray the arrears in installments.
23. In light of the foregoing, I proceed to order as follows;

#### **E. Orders**

- a. The upshot is that the Landlord's Application dated 12<sup>th</sup> January 2022 is hereby partially allowed in the following terms;
- b. The tenant shall offset the arrears owed to the landlord being Kshs, 2,009,000.00 as at July 2023, less any payments made thereafter, Landlord to provide current statement in 7 days, in installments of Kshs. 100,000.00 on or before the 25th day of every month beginning September 2023.
- c. The tenant shall keep paying rent as and when it falls due at the rate of Kshs. 80,500.00 on or before the 5th day of every month.
- d. Failure by the tenant to comply with orders (b) and (c) above shall accord the landlord the liberty to distress, break in and take back possession of the premises.
- e. The matter is settled on those terms.
- f. Each party shall bear their own Costs.

**HON A. MUMA**

**AG CHAIR/MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Ruling dated, signed and delivered virtually by Hon. Muma this 31<sup>st</sup> day of August 2023 in the Presence of Otieno for the tenant and Maina for the Landlord.

**HON. A MUMA**

**AG CHAIR/MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

