



**Galaczy Ventures Company Limited v Kipsetim (Tribunal Case E055 of 2024)
[2024] KEBPRT 1262 (KLR) (Civ) (6 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1262 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E055 OF 2024
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
SEPTEMBER 6, 2024**

BETWEEN

GALACZY VENTURES COMPANY LIMITED APPLICANT

AND

JOSEPH KIPSETIM RESPONDENT

RULING

A. Dispute background

1. This matter was commenced vide the applicant's reference dated 19th April 2024 under Section 6 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 in which it opposes a notice to terminate tenancy issued by the respondent herein.
2. On 27th May 2024, the reference was dismissed for want of prosecution.
3. The applicant filed a notice of motion under a certificate of urgency dated 5th July 2024 in which it sought for the following orders; -
 - i. That the application be certified urgent.
 - ii. That there be a temporary injunction prohibiting the respondent and/or his agents from harassing, threatening and/or evicting the applicant pending the hearing and determination of the application.
 - iii. That the order issued on 27/5/2024 terminating/striking out/dismissing the applicant's reference dated 19th April 2024 be set aside in its entirety.
 - iv. That the court be pleased to reinstate the applicant's reference dated 19th April 2024 for hearing and determination.



- v. That costs of the application be provided for.
4. The application is supported by an affidavit of even date in which the applicant deposes as follows; -
- i. That the applicant instituted the proceedings herein against the respondent vide a reference dated 19th April 2024 filed on 30th April 2024.
 - ii. That the same was duly served on 17th May 2024. A copy of the affidavit of service is annexed as “AK 1”.
 - iii. That the respondent did not enter appearance and/or file a notice or any response in respect to the said reference.
 - iv. That the advocate while following up the matter through the e-filing portal came to the realization that the reference came up for mention on 27th May 2024 and the same was terminated/struck out/dismissed for want of prosecution.
 - v. That the applicant’s advocate was not served with a mention notice for 27th May 2024 and therefore did not attend the tribunal session and consequently the reference was dismissed.
 - vi. That the applicant is keen to prosecute the reference.
 - vii. That no prejudice will be suffered by the respondent if the reference is reinstated.
5. On 8th July 2024, the court issued a temporary order of injunction against the respondent pending hearing of the application inter-partes.
6. The application is opposed vide a replying affidavit dated 15th July 2024 in which the respondent deposes as follows; -
- i. That the applicant is not the respondent’s tenant and is a stranger to the respondent.
 - ii. That the tenant who occupies the respondent’s premises known as Kipsetim Building, Kabarnet Plot No.9038/232 is one Caroline Jepkoech Kenei with whom the respondent has a lease agreement with. A copy of the said lease agreement dated 8th January 2018 is annexed as “JK 1(a) and (b)”.
 - iii. That on 26th March 2024, the respondent issued a notice to terminate tenancy to Caroline Jepkoech Kenei. A copy of the said notice is annexed as “JK 2”.
 - iv. That on 28th March 2024, the respondent served the aforesaid notice upon the agent or servant of Caroline Jepkoech Kenei who was working in the suit premises. A copy of the affidavit of service is annexed as “JK 3”.
 - v. That sometime in the month of June 2024, the respondent received a reference by the tenant in Tribunal Case No. E055 OF 2024 between Galaczy Ventures Company and the respondent, and since the applicant is not the respondent’s tenant, he did not bother to respond to the same since he had no tenancy relationship with them.
 - vi. That the applicant is a legal entity separate from the respondent’s tenant one Caroline Jepkoech Kenei hence they are distinct and not one and the same person.
 - vii. That the dismissal was regular in that, equity aids the vigilant and not the indolent.
 - viii. That upon service of the notice to Caroline Jepkoech Kenei, the said Caroline Jepkoech Kenei failed/or neglected to respond and as such the respondent has filed an application vide Tribunal



Cause No. E089 of 2024 seeking for her eviction from the respondent's premises. A copy of the application is annexed as "JK 5".

- ix. That according to the lease agreement dated 8th January 2018 and particularly paragraph 14, the tenant (Caroline Jepkoech Kenei) has no powers to sublet the premises without the permission of the respondent's agents. So, if she has sublet the suit premises, then she has breached the terms of the lease agreement.
 - x. That the business carried out by Caroline Jepkoech Kenei using the name Galaczy Ventures Wines and Spirits within the suit premises is currently illegal because the Baringo Central Sub-County Alcoholic Drinks committee did not approve the renewal of the license in a meeting held on 26th March 2024. A copy of the letter to the applicant is annexed as "JK 6".
 - xi. That even after being notified of the refusal to issue Caroline Jepkoech Kenei with a license as stated above, she continued to operate the business until 10th July 2024 when the County Commissioner, Baringo directed and sent its officers to close it.
 - xii. That the application herein is defective and therefore the respondent will be raising a Preliminary Objection on a point of law.
 - xiii. That if the application is allowed, the respondent will suffer irreparable loss and damage.
7. During the hearing on 16th July 2024, this Tribunal directed that the application be disposed of by way of written submissions. Only the applicant complied by filing its submissions dated 30th July 2024 which we shall consider while dealing with the issues for determination.

B. Issues for Determination

8. The following are the issues for determination; -
- a. Whether the applicant is entitled to the orders sought in the application dated 5th July 2024.
 - b. Who shall bear the costs of the application?

Issue (a) Whether the applicant is entitled to the orders sought in the application dated 5th July 2024.

9. The applicant approached this tribunal seeking for orders to set aside the order issued on 27th May 2024 and for reinstatement of its reference dated 19th April 2024 for hearing and determination.
10. The applicant in its written submissions avers that Order 12 Rule 7 of the Civil Procedure Rules 2010 gives this court discretion to set aside any judgement or order upon such terms that it deems fit and just.
11. The applicant has referred the court to the case of Anthony Kiprop (suing as the legal representative of the estate of Luka Kiprop Kiptai) v Sylvester Chemweno Sang & 2 others [2020] eKLR where the superior court outlined the parameters to be observed when exercising its discretion in an issue of this nature as follows; -
- 'a) Whether there is sufficient reasons or explanation for non-attendance;
 - b) Whether there was unreasonable delay in filing the application;
 - c) Whether there will be any prejudice.'
12. We note that the orders of 27th May 2024 dismissing the reference was on account of want of prosecution.



13. The reason given by the applicant for non-attendance/want of prosecution on the 27th May 2024 has been deposed in the applicants supporting affidavit as well as stated in the written submissions which was that the applicant's advocate was never served with the mention date and that it was not deliberate.
14. The above claim has not been disputed by the respondent in his replying affidavit.
15. The respondent in his replying affidavit has stated that he would be prejudiced by the reinstatement of the reference but upon perusal of the filed documents, the respondent has not demonstrated the prejudice he is likely to suffer.
16. The applicant further submits that the respondent did not participate in any way in the dismissal of the reference and that he admits that he was served with the reference but preferred not to enter appearance nor file any response to the same.
17. We note that the respondent in his replying affidavit has given reasons why he never bothered to file any response to the said reference, however the same are not part of the application herein and therefore this tribunal shall only focus on the issues raised in the application.
18. Additionally, the applicant submits that addressing the issues in the respondent's replying affidavit will amount to sub-judice as they are subject to a petition pending before the High Court.
19. On the other hand, the applicant has stated in its submissions that it stands to suffer great prejudice if the reference is not reinstated as it would face eviction by the respondent and in turn eventual closure of its business.
20. Based on the above analysis, we find and hold that the applicant is entitled to the orders sought in the application dated 5th July 2024 and the reference dated 19th April 2024 is hereby reinstated for hearing on merit.

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

21. As regards costs, the same are in the tribunal's discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall order the costs of the application to abide the outcome of the reference.

C. Orders

22. In conclusion, the following orders commend to us; -
 - a. The application dated 5th July 2024 is hereby allowed.
 - b. Parties are granted 30 days hereof to comply with Order 11 of the Civil Procedure Rules by filing witnesses' statements and any other documents in support of their respective cases.
 - c. Costs of the application shall abide the outcome of the hearing of the main reference.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY of SEPTEMBER 2024.

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL



HON. GAKUHI CHEGE

(PANEL MEMBER)

In the presence of:

Chepngoswo Holding brief for Mr Mwaita for the respondent

Miss Nyabuto for the applicant.

