



**Mint Holdings Limited v Josem Trust Limited (Tribunal Case
E1075 of 2022) [2024] KEBPRT 1422 (KLR) (9 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1422 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1075 OF 2022
CN MUGAMBI, CHAIR
SEPTEMBER 9, 2024**

BETWEEN

MINT HOLDINGS LIMITED TENANT

AND

JOSEM TRUST LIMITED LANDLORD

RULING

Introduction

1. The Tenant's notice of motion dated 16.7.2024 seeks orders that the Landlord be restrained from in any way interfering with the Tenant's quiet enjoyment of the suit premises pending the hearing and determination of the Application dated 21.07.2023 and also pending the hearing and determination of this suit. The assistance of the area OCS has also been sought in the enforcement of the said orders.

The Tenant's depositions

2. The Tenant's affidavit in support of the Application may be summarized as follows:-
 - a. That the Tenant has always paid rent as and when the same fell due.
 - b. That the Landlord has instructed its agents to levy distress for rent and evict the Tenant.
 - c. That the Tenant has since cleared the rent arrears and disputes the Landlord's position that the Tenant owes rent.
 - d. That negotiations between the parties have been ongoing.
 - e. That the Tenant feels unfairly treated and harassed by the Landlord.
 - f. That the Tenant is willing to pay any amount found to be owed to the Landlord.



The Respondent's depositions

3. The Respondent's replying affidavit sworn by Ms. Sarah Murungi Mbogua, a director of the Landlord may be summarized as follows:-
 - a. That the Respondent denies that the Tenant has been paying rent as alleged or at all and currently the Tenant owes the Landlord rent in the sum of Kshs. 4,811,069/=.
 - b. That on 12.10.2023, the court ordered the Tenant to pay rent to the Landlord and the Tenant is in utter contempt of the said order.
 - c. That the Tenant has issued bouncing cheques to the Landlord in the past and the Landlord continues to suffer loss and prejudice which continues to increase at the rate of Kshs. 95,691/= every month.

Analysis and determination

4. The only issue that arises for determination in this Application is whether the Tenant is entitled to the orders sought in his Application.
5. By an Application dated 16.11.2022, the Landlord sought eviction orders against the Tenant and also sought to levy distress for the sum of Kshs. 3,202,945/= in rent arrears. The Tenant by its Application dated 21.7.2023, sought orders that the pending Ruling in respect of the Application dated 16.11.2022, be arrested and the Landlord be restrained from evicting the Tenant.
6. In determining both Applications by its Ruling of 12.10.2023, the Tribunal made the following orders:-
 - 17: I appreciate the enormity and sensitivity of this dispute as if indeed it may turn out to be true that the Landlord is owed rent, then the rent continues to accrue and on the other hand if it eventually turns out that the Tenant does not owe rent, then there lies the danger of a distress for rent for no mean figures. In view of this observation, I will make the following orders:-
 - a. That the parties will prepare and file their complete accounts of rent within the next fourteen (14) days and exchange the same within the same period.
 - b. That the Tenant will continue to pay rent to the Landlord.
 - c. That the Reference by the Landlord on the issue of rent will be heard fully within the next thirty (30) days from the date of this Ruling.
 - d. That in the meantime, the Landlord is restrained from evicting the Tenant or in any manner interfering with the tenancy.
 - e. The matter will be mentioned on 27.10.2023 to confirm compliance with order (a) above.
7. When this matter came up for mention on 27.10.2023, none of the parties had complied with the orders of 12.10.2023 and a further mention was granted for 17.11.2023.

Before the said date, the Tenant filed the instant Application and thereby frustrated the earlier orders given for an expedited hearing. From the proceedings, I note that on 2.8.2024, Mr. Morara Counsel for the Tenant informed the court that his client had deposited Kshs. 580,000/= to cover rent for six months. Notably, Counsel for the Landlord was not in court on the 2.8.2024 when this statement was made by Mr. Morara.



8. It is evident that from the orders issued on 12.10.2023, the Application dated 21.7.2023 was exhaustively dealt with. In those circumstances, the prayers by the Tenant for an order of injunctive relief pending the outcome of the Application dated 21.7.2023 has no basis and is dismissed.
9. The Landlord had already been restrained from interfering with the Tenant's quiet use and possession of the suit premises and from evicting the Tenant by the Tribunal's orders of 12.10.2023 quoted above. Those orders have NOT been reviewed and/or set aside. They still remain valid court orders.
10. Although the court ordered the Tenant to continue paying rent, the court in the same breath ordered the issue of rent in the Landlord's Reference to be subjected to a full hearing. The Counsel for the Tenant has made a statement from the bar that his client has deposited the sum of Kshs. 580,000/= to cover rent for six months. This sum does not cover the Landlord's claim for rent in excess of Kshs. 4,000,000/= and it is more the reason why the issue of this disputed rent should go for hearing on a priority basis as earlier ordered.
11. In view of the orders of 12.10.2023, it is not therefore open for the Landlord to seek to evict the Tenant and/or interfere with the tenancy. I will therefore allow the Tenant's Application in terms of prayer (5) thereof and also direct that the parties will now comply with order (a) of the orders issued on 12.10.2023 within the next fourteen (14) days.
12. Costs will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9TH DAY OF SEPTEMBER, 2024

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Ms. Mwanza for the Tenant and Mr. Mugo for the Landlord.

Court: Mention on 30.9.2024. Ruling to be supplied to all parties.

