



**Murage v Kariuki (Tribunal Case 004 of 2022)  
[2024] KEBPRT 993 (KLR) (25 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 993 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE 004 OF 2022  
P MAY, MEMBER  
JUNE 25, 2024**

**BETWEEN**

**PURITY NJERI MURAGE ..... APPLICANT**

**AND**

**PETER KARIUKI ..... RESPONDENT**

**RULING**

1. The present proceedings commenced through the tenant's Complaint filed under section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* dated 10<sup>th</sup> February, 2022. In the reference, the tenant sought for the Tribunal's intervention since the landlord had allegedly disconnected electricity at the demised premises. Contemporaneous with the reference, the tenant had also filed a notice of motion brought by way of certificate seeking interlocutory orders against the landlord. The application was determined in favour of the tenant on 23<sup>rd</sup> December, 2022. The Tribunal directed the parties to take steps towards setting the reference for hearing.
2. Contrary to the directions issued in the ruling to have the reference be fixed for hearing on priority basis, the parties failed to take any action and they went on hibernation until 12<sup>th</sup> July, 2023 when the tenant resurfaced by filing an application under certificate of urgency. The tenant in her later application which is the subject of this ruling sought for orders to have the landlord refund her the unexhausted dues and that she be allowed to vacate the demised premises.
3. The tenant set out the grounds in support of application succinctly. She claimed that she had lost customer capital and, in the event, she was to resume her operations, she was to invest greatly in marketing. She had therefore lost interest in the business and wanted to wind up the business. She stated that upon the application being allowed, she would file calculated costs in support of her claim for damages.



4. The application has been opposed by the Landlord who filed a replying affidavit. The landlord stated that they had expended money towards improving the premises thus the tenant was in arrears thus if the application was allowed, they would suffer loss.
5. The application was canvassed by way of written submissions. I have had the benefit of perusing through the submissions filed by the parties in support of their respective positions and wish to proceed as follows:
6. At the onset, it is important to restate that the jurisdiction of the Business Premises Rent Tribunal is governed by the [Landlord and Tenant Shops Hotels and Catering Establishments Act](#) Cap 301. The preamble to the [Act](#) states that:

“It is an Act of Parliament to make provisions with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto.”

7. Section 12 (l) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 Laws of Kenya provides that the Tribunal has jurisdiction to:

12 (l) to award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill, and improvements carried out by the tenant with the landlord's consent;

8. The tenant has through the present application sought for orders to recover unexhausted dues and at the same time be allowed to move her goods from the demised premises. The prayers have been couched to suggest that the tenant is seeking damages from the landlord. The Tribunal has the power to make an order for compensation as stated above.
9. The term damages was defined in the case of [Antique Auctions Ltd v Pan African Auctions Ltd](#) [1993] eKLR where the Court of Appeal defined the term damages according to the McGregor book on Damages as follows:

The definition of the term, “damages” is set out in [McGregor on Damages Eighteenth Edition paragraph 1](#) as:

“pecuniary compensation, obtainable by success, for a wrong which is either a tort or a breach of contract, the compensation in the form of a lump sum which is awarded unconditionally, and is generally, but now not necessarily, expressed in English currency.”

10. Damages may be in the form of general damages or special damages. Special damages have to be specifically pleaded and strictly proved by evidence. This would include the alleged un-exhausted dues owed to the Tenant.
11. It is clear from the prayers in the application as discussed above that the Applicant urges this Tribunal to make a determination on whether he is entitled to a refund of the unexhausted dues in rent and to vacate the premises. This has the effect of determining the reference with finality without calling for further evidence. There is only one undesirable eventuality; if the Tribunal were to grant this Application, it would have disposed of the Petition. In this regard, I can do no more than quote what



Rika J said in *East African Portland Cement Company Limited v Attorney General and Another* 2013 eKLR. That:

“Interim orders are not suitable if by their grant, they finally determine the substantive dispute. The Courts must be wary of prejudgment of the substantive merits.”

12. In view of the foregoing, it is clear that the application dated 12<sup>th</sup> July, 2023 is only ripe for dismissal. The Tribunal proceeds to dismiss the same with no orders as to costs. The parties to file and exchange paginated bundles of documents and statements that they seek to rely on during the hearing of the reference within 7 days. The hearing to be fixed not later than 21 days from the date hereof.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25<sup>TH</sup> DAY OF JUNE, 2024**

**HON. PATRICIA MAY - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Okato for the Landlord and in the absence of the Tenant

Court: Mention on 19.07.2024 to confirm compliance

