



Mwaura v Mbela (Tribunal Case E198 of 2023)
[2023] KEBPRT 1124 (KLR) (10 November 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1124 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E198 OF 2023
M MAKORI, MEMBER
NOVEMBER 10, 2023

BETWEEN

NELLY SAMBA MWAURA **APPLICANT**

AND

JOSECK MBELA **RESPONDENT**

RULING

1. The present application was filed by the Applicant vide a Notice of Motion dated 18/8/2023 seeking orders to have the Respondent compelled to fix all the doors he had removed from the house occupied by the Applicant/Tenant.
2. The Respondent/Tenant filed a Replying Affidavit dated 8/9/2023 which attempted to explain the reasons why the said doors had been removed.
3. That on 25/8/2023 the Honourable Court Granted Interim Orders to the effect that the Respondent was supposed to immediately and unconditionally fix all the doors to the premises pending hearing slated for 19/9/2023.
4. On 19/9/2023 the parties appeared before the Court for hearing, the Tenant intimated the willingness to file a Further Affidavit together with submissions. The Landlord was to take 7 days to file their written submission.
5. Though the Tenancy Agreement between the parties was not produced, a letter dated 3/10/2022 by Dennis Juma the Assistant County Commissioner by and large documented the wishes and aspiration of parties as reproduced below; -
 - a. Tenant to operate wine and spirit in accordance with the law (liquor licensing law, Alcohol Drink Control Act 2010).



- b. Since the Tenant had renewed the license in June before the 1st Warning to continue operating until the expiry of license period on 3/1/2023.
- c. Both Parties to endeavor in fostering good relationship among them for the period stipulated in the above 2, to promote good neighborhood.
- d. If any of the above conditions violated following measures will apply as indicated below;
 - i. The Tenant will vacate the premises the following day without compensation or so ever.
 - ii. The Landlord will compensate the Tenant licence fee since it's not transferable and relocation fee.

6. The dispute arose on or about the 17/08/2023 when the Respondent removed all doors to the premises occupied by the Tenant and carried them away.

7. One vital question that this Honourable Court must determine is whether the application dated 18/8/2023 for return of removed doors is merited and what is the appropriate relief grant in circumstances.

8. In addressing the above underscored issues, the Court wishes to re-state the mandate it has in determining the disputes brought before its pursuant to the provisions of section 12 (1) of the Landlords & Tenants (Shops, Hotel & Catering Establishments Act, Cap 301 Laws of Kenya) that; -

- 1. A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power—
 - a. to determine whether or not any tenancy is a controlled tenancy;
 - b. to determine or vary the rent to be payable in respect of any controlled tenancy, having regard to all the circumstances thereof;
 - c. to apportion the payment of rent payable under a controlled tenancy among tenants sharing the occupation of the premises comprised in the controlled tenancy;
 - d. where the rent chargeable in respect of any controlled tenancy includes a payment by way of service charge, to fix the amount of such service charge;
 - e. to make orders, upon such terms and conditions as it thinks fit, for the recovery of possession and for the payment of arrears of rent and mesne profits, which orders may be applicable to any person, whether or not he is a tenant, being at any material time in occupation of the premises comprised in a controlled tenancy;
 - f. for the purpose of enabling additional buildings to be erected, to make orders permitting landlords to excise vacant land out of premises of which, but for the provisions of this Act, the landlord could have recovered possession;
 - g. where the landlord fails to carry out any repairs for which he is liable—



- i. to have the required repairs carried out at the cost of the landlord and, if the landlord fails to pay the cost of such repairs, to recover the cost thereof by requiring the tenant;
- ii. to pay rent to the Tribunal for such period as may be required to defray the cost of such repairs, and so that the receipt of the Tribunal shall be a good discharge for any rent so paid;
- iii. to authorize the tenant to carry out the required repairs, and to deduct the cost of such repairs from the rent payable to the landlord;

- h. to permit the levy of distress for rent;
- i. to vary or rescind any order made by the Tribunal under the provisions of this Act;
- j. to administer oaths and order discovery and production of documents in like manner as in civil proceedings before the High Court, to require any landlord or tenant to disclose any information or evidence which the Tribunal considers relevant regarding rents and terms or conditions of tenancies, and to issue summons for the attendance of witnesses to give evidence or produce documents, or both, before the award costs in respect of references made to it, which costs may be exemplary costs where the Tribunal is satisfied that a reference to it is frivolous or vexatious;
- k. 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;
- l. to require a tenant or landlord to attend before the Tribunal at a time and place specified by it, and if such tenant or landlord fails to attend, the Tribunal may investigate or determine the matter before it in the absence of such tenant or landlord;
- m. to enter and inspect premises comprised in a controlled tenancy in respect of which a reference has been made to the Tribunal.

9. It is clear that in exercising the powers conferred under the Landlord and Tenants, Shops, Hotels, and Catering Establishments Act, the Tribunal must restrict itself to the powers conferred under section 12 aforesaid in giving the appropriate relief to the disputants.

10. Having captured the provision of I wish to terms agreed upon by parties with respect of the suit property. It's noting that none of the parties has raised the issue of non-payment of rent when is the bedrock of Landlord-Tenant relationship.

11. It is worth noting it was never agreed anywhere and between the parties that in default of any of them, removing the door is a recourse the offended party (most likely being the Landlord) shall take.

12. When this matter was filed, the court directed that the Respondent/Landlord immediately and unconditionally fixes all doors to the premises pending hearing slated for 19/9/2023, this position the court cannot ascertain whether it was complied with.



13. I have keenly weighed the reasons given by the Respondent, against the prayers of the Applicant and in light of the documented wishes of parties and I am not persuaded by the reasons given for the removal of a door to the premises occupied by the Applicant/Tenant.
14. I am as thus convinced that the Applicant/Tenant application dated 18/8/2023 is merited and allowed in the following terms;
 - i. The Respondent/Landlord to fix all removed doors forthwith and not later than 7 days.
 - ii. The Tenant to observe good discipline including that of her customers and payment of rent in full.
 - iii. That OCS Mwatate Police Station to ensure compliance with orders (i) and (ii) above.
 - iv. Each part to bear its own cost.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10TH DAY OF NOVEMBER 2023

**HON. MIKE MAKORI (MR.) - MEMBER
BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the absence of the parties

