



REPUBLIC OF KENYA



**Wanjiku v Shehe (Tribunal Case E149 of 2024)  
[2024] KEBPRT 1637 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1637 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E149 OF 2024  
A MUMA, MEMBER  
NOVEMBER 13, 2024**

**BETWEEN**

**BEATRICE WANJIKU ..... APPLICANT**

**AND**

**VICTOR SHEHE ..... RESPONDENT**

**RULING**

**A. Parties And Representatives**

1. The Applicant, Beatrice Wanjiku, is the tenant and had rented space for business in the suit property situated at Bombolulu, Mombasa County (hereinafter the “Tenant”).
2. The firm of Mureti Cosmas & Co. Advocates represents the Tenant in this matter.
3. The Respondent, Victor Shehe, is the owner of the suit premises and had rented out the aforementioned space to the tenant (hereinafter the “Landlord”).
4. The Landlord represents himself in this matter.

**B. Background Of The Dispute**

5. The Tenant moved this Tribunal vide a Reference and a Notice of Motion Application filed under a Certificate of Urgency both dated 12<sup>th</sup> June, 2024 on a complaint that the Landlord unlawfully locked down the suit premises.

**C. The Tenant’s Claim**

6. The Tenant avers that on 1<sup>st</sup> June 2024, the Landlord issued a verbal termination notice demanding that the Tenant vacate with immediate effect and disconnected the Tenant’s electricity supply.



7. On 11<sup>th</sup> June 2024, the Landlord stormed to the suit premises, put his padlock and broke the Tenant's padlock thus maintaining sole access to the suit premises.
8. The Tenant avers that she had stock in the suit premises which was dependent on electricity and lack thereof, in addition to closure of the suit premises, occasioned her substantial loss.
9. The Tenant also avers that the reason that prompted the Landlord to irregularly terminate the tenancy was allegations that the Tenant was in a relationship with the Landlord's son.
10. Additionally, the Tenant averred that the Landlord's claim that the Tenant's business was causing disturbances was an afterthought since the business has been operational for one year and the adjacent house had a pub as well.
11. The Tenant has expressed her willingness to vacate the premises if she will be compensated for loss she incurred and loss of income occasioned by closure of the suit premises whilst she was conducting business.

#### **D. The Landlord's Claim**

12. The Landlord claims that the reason for terminating the tenancy was because of the nature of the business being operated by the Tenant (a pub/bar) that was causing disturbance to the people and children in the surrounding area.
13. The Landlord avers that they went to the area chief with regard to the same and it was concluded that the Tenant would vacate the premises and rent exceeding that of May, being the last month of tenancy (Kshs. 3,670.00) was refunded to the Tenant.
14. It's the Landlord's further averment that he closed the shop because the Tenant did not vacate the premises at the beginning of June as resolved by the area chief in the presence of both parties.
15. In opposition of the quantification of loss of stock as presented to this Court by the Tenant, the Landlord avers that whisky (being listed as one of the items in the quantification) does not expire as alleged by the Tenant. He also avers that the Tenant added stock during the period after the tenancy was terminated.

#### **E. List Of Issues For Determination**

16. Having given full consideration to the submissions filed by Counsels, the issue for determination is;  

Whether the Tenant should be granted compensation for loss of stock, income and costs of development of the suit premises amounting to Kshs. 171,160.00 as prayed?

#### **F. Analysis & Determination**

17. It is not disputed that the parties herein went to the area chief on or about 29<sup>th</sup> December 2023 as evidenced by a copy of a summary of the meeting and resolution made by the area chief adduced before this Court.
18. The resolution made was that the tenant vacates the premises in June 2024 and that the Tenant be refunded Kshs. 3,670.00, being the rent in excess paid by the Tenant. The Tenant has not denied receiving the said amount.
19. Therefore, I am of the view that the Tenant implied by her conduct that she was to vacate the premises, having received the amount and having not contested the resolution by the chief.



20. With regard to the issue of loss of stock as alleged by the Tenant, the Tenant has given a quantification of loss of stock, which quantification was done in the presence of the Inspector and as per the orders of this Court dated 17<sup>th</sup> July 2024.
21. This Tribunal is guided by the pronouncement of the Court in *Ann Wambui v Julia Wangari Kamau* [2021] eKLR where the Court, in dealing with the issue of loss of stock due to disconnection of electric supply, held as follows:
- “The tenant has not provided any evidence on the loss incurred during the period her premises remained without electricity supply...”
22. In this instant case, the Tenant has not demonstrated that she lost all the items listed in the quantification. Most manufactured/processed alcoholic products are not considered perishable goods that rely on electricity to maintain a consumable state.
23. In this light, the compensation sought by the Tenant for these manufactured alcoholic products such as “captain morgan” and “chrome” as listed in the Further Statement on Reference dated 12<sup>th</sup> August 2024, has not been sufficiently proved by the Tenant. Therefore, this Tribunal is of the opinion that the Tenant cannot seek compensation for these goods.
24. However, the Tribunal will allow compensation for the “keg” which is relatively perishable, in the amount of Kshs. 8,000.00 as sought by the Tenant.
25. On the second issue, being loss of income, this Tribunal is guided by the decision of the Court in *Musonye v Enanga* (Tribunal Case E100 of 2024) [2024] KEBPRT 1336 (KLR) (Commercial and Tax) where the Court held that:
- “If indeed the Tenant was earning Kshs.10,000/- per day, that would average a monthly income of Kshs.300,000/- per month. That is taxable income which should have been structured in elaborate accounts showing among others payment of tax on the income to the Kenya Revenue Authority (KRA) None of such evidence was presented to the court. Indeed the Tenant was suspiciously very quiet on the question of the alleged income in his submissions in court. We are therefore not convinced that the Tenant lost such colossal amounts of money during the lockdown of the demised premises...”
26. The Tenant herein has produced extracts showcasing the income, expenses and profits of their daily operations. However, these extracts are merely speculative and not elaborate enough to allow this Tribunal to grant the orders sought by the Tenant.
27. The Tenant has also sought compensation for costs of construction/development of the counter in the suit premises amounting to Kshs. 15,000.00. However, the Tenant has not produced evidence to demonstrate the same and therefore, this Tribunal is inclined to dismiss the same.

## **G. Orders**

28. In the upshot the following orders shall abide;
- a. The Tenant’s Reference and Application dated 12<sup>th</sup> June, 2024 are hereby dismissed;
  - b. The Tenant is awarded Kshs. 8,000.00 for loss of stock of keg which amount is offset against rent arrears owed to the Landlord by the Tenant;
  - c. Profits sought by the Tenant are speculative and not proved thus not awardable;



- d. Claim for construction of shelves dismissed.
- e. No orders as to Costs.

**HON A. MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Ruling dated, signed and delivered virtually by Hon A. Muma this 13<sup>th</sup> day of November 2024 in the presence of Mureti for the Tenant and in the absence of the Landlord.

**HON A. MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

