



**Wanyonyi v Omondi & another (Tribunal Case E017 of 2025)
[2025] KEBPRT 369 (KLR) (Civ) (6 August 2025) (Ruling)**

Neutral citation: [2025] KEBPRT 369 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E017 OF 2025
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
AUGUST 6, 2025**

BETWEEN

ELIUD WASIKE WANYONYI APPLICANT

AND

STEPHEN OMONDI 1ST RESPONDENT

SAMUEL TENKEET (OCS MATISI POLICE STATION) 2ND RESPONDENT

RULING

A. Dispute Background

1. The tenant/applicant, filed a Notice of Motion under Section 3, 3A, and 63(e) of the Civil Procedure Act and Section 12(1) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap 301) dated 18th March 2025 seeking the following orders; -
 - i. That the respondents be summoned to show cause why they should not be cited for contempt of the Tribunal's orders issued on 6th February 2025.
 - ii. That in default of showing cause, the applicant prays that the respondents be held in contempt and punished either by fine or imprisonment.
 - iii. That the landlord/respondent compensates him for losses suffered due to the illegal closure of his business premises, with the specific loss to be quantified later.
 - iv. That the cost of the application be borne by the respondents.
2. The application is based on the Tribunal's order of 6th February 2025, which directed the landlord and OCS Matisi to reopen the suit premises. A copy of the order is annexed as 'EWW 1'.



3. That the said order was served on the landlord/respondent and the OCS Matisi Police Station on 11th and 12th February 2025, respectively. A copy of the affidavit of service is annexed as 'EWW 2'.
4. That despite service, the landlord/respondent has blatantly refused to obey the Tribunal's order, and the premises remain locked.
5. In the Supporting Affidavit dated 18th March 2025, the applicant deposes that he is the lawful tenant of a premises at Matisi Shopping Centre which he leased from the respondent.
6. He states that the landlord unlawfully and unjustifiably locked his business premises, prompting him to file an application on 5th February 2025 for reopening. The applicant confirms that the Tribunal issued an order on 6th February 2025 directing the reopening of the premises.
7. That the affidavit of service confirms the said orders were served on the landlord and the OCS Matisi.
8. The applicant deposes that the respondents have disobeyed the orders, and his business remains closed, causing loss of income and hardship to his family.
9. The application is opposed vide a replying affidavit by the landlord/respondent dated 2nd April 2025, in which he deposes that the application lacks merit and accuses the applicant of dishonesty and claims the application is a cover-up for criminal activities allegedly conducted within the premises and an attempt to evade rent payment that has been outstanding since 2021.
10. The landlord contends that the orders sought by the applicant should not be granted, as the applicant has approached the Tribunal with unclean hands.
11. He asserts that the Tribunal's order of 6th February 2025 was fully complied with, and the premises were opened on 17th February 2025, with items accounted for and confirmed to be intact (annexure marked 'SO 1').
12. That the premises were allegedly closed again after discovering that criminal activities were being carried out or organized from the premises.
13. He accuses the applicant of concealing material facts from the Tribunal and also claims the premises have never been renovated and are unfit for use.
14. The landlord refers to annexures SO 3(a)–(f) in his replying affidavit dated 5th March 2025, which he says confirm the state of the premises.
15. The landlord denies that the applicant has suffered any loss but instead, he claims he is the one who has suffered due to non-payment of rent for over four years and damage to the premises.
16. He further deposes that the premises were locked to safeguard property after the applicant and his employee were arrested and detained, leaving no one to manage the premises.
17. In response, the tenant filed a further affidavit dated 2nd April 2025 in which he maintains that the Tribunal issued clear orders on 6th February 2025, directing the reopening of the premises, and that the order was served on both the landlord and the OCS Matisi Police Station.
18. The applicant reiterates that despite service, the landlord deliberately disobeyed the order, and that his business has remained closed since. He also denies all claims by the landlord that criminal activities were taking place in the premises, stating that there has never been any arrest or conviction against him to support such allegations.



19. He further disputes the allegation that the landlord opened the premises on 17th February 2025, asserting that he was never contacted, involved, or present during the alleged opening.
20. The applicant challenges the alleged inventory exercise, stating he was denied access to verify the condition and presence of his property.
21. The tenant denies owing any rent arrears for four years as claimed, stating that no evidence has been presented by the landlord to substantiate this.
22. The tribunal directed parties to file their written submissions and both parties complied with the landlord filing his submissions dated 3rd July 2025 and the tenant filing his dated 17th July 2025. We shall consider both submissions as we deal with the issues for determination

B. Issues for Determination and Analysis

23. The following issues arise for determination:
 - a. Whether the landlord should be cited for contempt of the court orders of 6th February 2025.
 - b. Whether the tenant is entitled to the orders sought in the application dated 18th March 2025.
 - c. Who shall bear the costs of the application?

Issue (a) Whether the landlord should be cited for contempt of the court orders of 6th February 2025.

24. The applicant alleges that the landlord wilfully disobeyed the Tribunal's order dated 6th February 2025, which directed the reopening of the suit premises. The burden lies on the applicant to establish that the respondent was served with the order and knowingly disobeyed it.
25. It is not disputed that the order was duly served on both the landlord and the OCS, as confirmed in the affidavit of service annexed as 'EWW 2'.
26. However, the landlord has produced evidence showing that the order was complied with. In particular, annexure 'SO 1' is an inventory prepared by the police on 17th February 2025 confirming that the premises were opened and items belonging to the tenant were found therein. The inventory bears the name of the tenant as one of the people present, and is endorsed by the OCS Matisi Police Station, suggesting the tenant's awareness and participation.
27. The applicant, while denying the reopening, has not produced any contrary evidence. He merely denies the facts without discharging his evidentiary burden.
28. As held in *Mutitika v Baharini Farm Ltd [1985] KLR 227*,

"The standard of proof in contempt proceedings must be higher than a balance of probabilities, almost but not exactly beyond reasonable doubt."

24. The applicant has not met this standard.
25. Similarly, in *Economy Dry Cleaners Ltd v Kenya Industrial Estates Ltd [2006] eKLR*, the court emphasized that

"contempt must be deliberate and intentional".
24. The Tribunal is satisfied that the landlord made a good faith attempt to comply with the order.



25. Accordingly, the Tribunal finds no sufficient grounds to cite the landlord for contempt, and the prayer for punishment is declined.

Issue (b) Whether the tenant is entitled to the orders sought in the application dated 18th March 2025

31. The applicant seeks several orders, including summons for contempt, punishment of the respondents, compensation for alleged loss of business, and costs of the application.

32. As established above, the landlord complied with the order of 6th February 2025. Therefore, the prayer for contempt summons and punishment cannot be sustained.

33. Regarding compensation, the applicant claims that he suffered financial loss due to the closure of his business. However, he has not attached any evidence of operational losses, receipts, sales' records, licenses, or even photographs showing the continued closure. In the absence of such evidence, the claim is unsubstantiated.

34. In Kenya Power & Lighting Co. Ltd v Agnes Nangila Malwa [2018] eKLR, the court held that “special damages must be specifically pleaded and strictly proved.”

31. The tenant has neither specifically pleaded the amount of loss nor tendered supporting documents.

32. The Tribunal finds that the tenant has failed to prove entitlement to any of the substantive reliefs sought in his application dated 18th March 2025. Accordingly, the same is declined in its entirety.

Issue (c) Who shall bear the costs of the application

31. Under Section 12(1) (k) of Cap. 301, Laws of Kenya, costs of any suit before this tribunal are in its discretion but always follow the event unless for good reasons otherwise ordered. The applicant has not succeeded on any of the prayers sought in the application. The landlord, on the other hand, has demonstrated compliance and rebutted the allegations made against him. Consequently, the Tribunal finds that costs of the application shall be borne by the applicant/tenant.

C. Final Orders

39. In conclusion, the Tribunal makes the following orders:

- The application dated 18th March 2025 is hereby dismissed in its entirety
- Costs of the application shall be borne by the tenant/applicant.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF AUGUST 2025.

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE

(PANEL MEMBER)

In the presence of:



Kariuki for the tenant

No appearance for respondent

Further Orders:

Application dated 4/2/2025 shall be heard on 25/8/2025. In the meantime, the orders of 25/3/2025 are hereby extended.

