



**REPUBLIC OF KENYA**

**BUSINESS PREMISES RENT TRIBUNAL**

**VIEW PARK TOWERS 7<sup>TH</sup> & 8<sup>TH</sup> FLOOR**

**TRIBUNAL CASE NO. 830 OF 2020 (NAIROBI)**

**ANDERSON MBAKA.....TENANT/ APPLICANT**

**VERSUS**

**JANE KISELI.....LANDLORD/RESPONDENT**

**RULING**

1. By a motion dated 8<sup>th</sup> October, 2020 the Applicant/Tenant moved this court seeking for orders to restrain the Landlord/Respondent from interfering with her quiet occupation and lawful enjoyment of the suit premises situate at plot no. 15, UPPER MATASIA, KAHARA SHOPPING CENTRE.
2. The application is supported by the Applicant's affidavit sworn on 8<sup>th</sup> October, 2020 and the grounds set out on the face of the application.
3. The Applicant's case is that she was a Tenant of the Respondent paying a monthly rent of Kshs.10,000/- and that at the commencement of the tenancy she carried out renovation as the suit premises were not operational and paid an outstanding electricity bill of Kshs.80,000/-.
4. It is the Applicant's case that the repairs cost her Kshs.415,650/- all inclusive and she started carrying on business for a period of only 3 months where upon the Respondent started issuing threats to occupy the premises.
5. The Tenant avers that she never recovered any money out of the renovations carried out by her before she was issued with illegal notice demanding non existent rent arrears and threats of eviction.
6. The tenant contends that she was unable to carry on with business in the premises. She reported the matter to Ngong Police Station vide OB No.34/7/10/2020.
7. The tenant complains that the Respondent broke into part of the premises with stock worth Kshs.471,830/-. No lawful notice was served upon the Tenant.
8. In response to the application, the Landlord filed a replying affidavit on 22<sup>nd</sup> October, 2020 saying that the Applicant was his Tenant paying a monthly rent of Kshs.15,000/-.
9. The Respondent contends that the Applicant was free to customize the premises according to her preference at her own cost.
10. The Respondent deposes that he paid the electricity bill of Kshs.40,000/- before the Tenant took possession of the premises.
11. After taking possession of the premises, the business was closed down by Kajiado County Council for lack of an operating permit and the Applicant failed to pay rent from 1<sup>st</sup> August, 2019 to 30<sup>th</sup> June, 2020 (11 months) totaling to Kshs.165,000/-.
12. A demand letter was written to the Applicant and the Applicant voluntarily gave the keys to the Respondent after failing to pay the amount owed.
13. The Respondent contends that by the time of taking possession of the premises, there was only furniture therein.
14. In her further affidavit, the Applicant avers that the Respondent entered the premises without her consent and confiscated her items

thereby occasioning loss to her.

15. From the foregoing pleadings, the following issues are worthy of note:

- (a). There was an oral tenancy in respect of the demised premises between the Applicant and the Respondent.
- (b) The applicant carried out renovations in the premises without any written agreement on the issue of compensation in the event of termination of the tenancy.
- (c ) although the Tenant/applicant claims that the Respondent entered into the premises unlawfully as a result of which she reported the matter to Ngong Police Station, the nature of the report is not disclosed by evidence tendered neither the action taken by the police.
- (d) It is not clear who paid for electricity bill before or after the Tenant took possession as none of the parties have exhibited evidence of payment.
- (e) There is uncertainty as to the reason for discontinued business by the Applicant in the suit premises in view of the contention by the Respondent that the Applicant was denied business permit by the county government.
- (f) if the tenancy relationship between the parties herein came to an end, would this court still have jurisdiction to issue the orders sought without any amendment of pleadings?.
- (g) would this honourable court grant an order for compensation in respect of improvements carried out in the premises brought any agreement between the parties herein?.
- (h) In absence of any written agreement for compensation when the parties and amendment of pleadings filed herein, this court cannot order for compensation in favour of the applicant.

16. In absence of written agreement for compensation between the parties and amendment of pleadings filed herein, this court cannot order for compensation in favour of the Applicant.

17. The tenancy relationship between the applicant and the Respondent having come to an end under unclear circumstances in this suit, this Tribunal is divested of jurisdiction to grant the equitable relief sought in the matter.

18. In view of the foregoing conclusions, the application before me cannot succeed and is hereby dismissed.

19. As regards costs I direct that each party shall bear own costs for reasons that both have failed to avail all the materials relevant to determination of the dispute.

20. There being no basis upon which this court can continue exercising jurisdiction in this matter, I direct that the court file in respect thereof be marked as closed subject to any right of appeal available to both parties.

**HON. GAKUHI CHEGE**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

DATED, SIGNED & DELIVERED THIS 21<sup>ST</sup> DAY OF MAY 2021.

**HON. GAKUHI CHEGE**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

**In the presence of:**

Mr. Maranga for the Respondent/Landlord

No appearance for the Tenant