



Ndirangu v Cajentan Ombere t/a Welco Services International & 2 others (Tribunal Case E021 of 2022) [2023] KERRT 1182 (KLR) (20 April 2023) (Ruling)

Neutral citation: [2023] KERRT 1182 (KLR)

**REPUBLIC OF KENYA
IN THE RENT RESTRICTION TRIBUNAL
TRIBUNAL CASE E021 OF 2022
HK KORIR, CHAIR
APRIL 20, 2023**

BETWEEN

NEESEY MUTHONI NDIRANGU PLAINTIFF

AND

**CAJENTAN OMBERE T/A WELCO SERVICES INTERNATIONAL 1ST
DEFENDANT**

MUITA CHACHA 2ND DEFENDANT

LITTLE VINEYARDS AUCTIONEERS 3RD DEFENDANT

RULING

1. By an Application dated 3rd August, 2022 the 1st Defendant prayed for release of the Sum of Kshs.153.578/- which was deposited in the Tribunal account pursuant to orders issued on 9th May, 2022
2. He also prayed that the Plaint dated 10th January, 2022 be struck out with cost to the Plaintiff.
3. The Application was supported by an affidavit sworn by Cajetan Ombere the 1st Defendant property manager who deponed that the Tenant has not paid rent for January-April, 2022 before vacating on 10th May, 2022 after paying rent for May.
4. He further depones that with the Plaintiff hearing paid rent for one month in May, 2022, it is morally correct and lawful that he settles the rent for January to April, 2022.
5. Further that the Plaint dated 10th January, 2022 was not signed and therefore defective and bad in law.
6. The Plaintiff vide her replying affidavit dated 29th August, 2022 deponed that she is a layman who had initially acted in person while in distress and still under post-natal pressure having just delivered a baby at the time.



7. That in any event all the other documents accompanying the plaint including the verifying affidavit were properly signed and hence it was an innocent mistake which should not be used against her and is curable under Sec 15 (1) of the Civil Procedure Act and Civil Procedure Rules 2010 order rule 15 (1)
8. The Plaintiff further deponed that she had never been in occupation of the premises since 10th January up to by which time she had settled all the rent due and in good time. That she had given the Defendant notice to vacate which the Defendants ignored and did not respond.
9. The Plaintiff also deponed that Tribunal and indeed any court cannot make final orders without giving parties an opportunity to ventilate their case as sought by the Defendants application.
10. Having considered both parties pleadings as filed together with the written submissions and authorities cited the Tribunal agrees with the Plaintiffs position that the Defendants cannot have his cake and eat it at the same time by seeking to benefit from orders made on account of alleged defective pleadings
11. Article 159 (1) enjoins the Tribunal to administer justice without undue regard to procedural technicalities and places heavy premium on substantive Justice
12. Accordingly, the Defendants application is dismissed and parties directed to take a date for main hearing of the suit with the plaint dated 10th deemed as properly filed.
13. Each party shall bear their own costs of the application

RULING DELIVERED AND ISSUED IN CHAMBER ON THIS 20TH DAY OF APRIL, 2023 IN ACCORDANCE WITH THE COVID-19 PRACTICE RULES

SIGNED

HILLARY K. KORIR

CHAIRMAN

RENT RESTRICTION TRIBUNAL

