Case Number:	Tribunal Case E038 of 2021 (Kakamega)
Date Delivered:	15 Mar 2022
Case Class:	Civil
Court:	Business Premises Rent Tribunal
Case Action:	Ruling
Judge:	Hon Cyprian Mugambi Nguthari (Chairman)
Citation:	Abdullakadir Aden Hassan v Susan Ambetsa [2022] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Tribunal
History Magistrates:	-
County:	Kakamega
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application allowed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA

BUSINESS PREMISES RENT TRIBUNAL

VIEW PARK TOWERS 7TH & 8TH FLOOR

TRIBUNAL CASE NO. E038 OF 2021 (KAKAMEGA)

ABDULLAKADIR ADEN HASSAN......LANDLORD/APPLICANT

VERSUS

SUSAN AMBETSA...TENANT/RESPONDENT

RULING

1. The Tenant's/Applicant's application dated **28th October 2021** seeks to set aside the orders made by the Tribunal on **28th October 2021** and further seeks orders to the effect that the Tenant/Applicant is allowed to continue paying rent as and when it falls due while being accorded peaceful occupation.

2. The application is supported by the affidavit of Susan Ambetsa which I summarize as follows;

a. That on **23rd September 2021**, she was served with a hearing notice dated **23rd September 2021,** the Landlord's reference and notice to terminate or alter terms of tenancy.

b. That she was present in court on **28th October 2021** ready to argue her case, she proceeded to the registry to file her affidavit of service and on returning found that the matter had been called out and adverse orders made against her.

c. That it is in the interests of justice that she is accorded an opportunity to oppose the Landlord's notice.

d. That the notice to terminate tenancy was never served upon the Applicant/Tenant.

3. Exhibit SAI is a replying affidavit sworn by the Tenant, presumably responding to the Landlord's reference. I summarize it as follows;

a. That on **10th June 2021,** the Tenant was served with the Landlord's notice to terminate tenancy.

b. That the Tenant never filed a reference to oppose the Landlord's notice as she was not aware, that she was required to oppose the same by filing a reference.

c. That the Tenant has paid all the outstanding arrears in full.

4. The Respondent/Landlord has filed a replying affidavit opposing the Tenant's application. I summarize the said affidavit as follows;

a. That the notice to terminate tenancy was served upon the Tenant on **1st September 2021.**

b. That the Tenant has acknowledged having been served with the notice and hearing notice.

c. That the Tenant is still in rent arrears even after paying **Kshs 15,000/-.**

d. That the Tenant has also not been paying her electricity bill.

e. That the Tenant should be ordered to pay the rent arrears and electricity bills and thereafter be ordered to vacate the premises.

5. The Tenant in her further affidavit has reiterated that she does not owe any rent arrears and her electricity bill is fully paid up.

6. The only issue to be determined is whether the Tenant is entitled to the prayers sought in her application.

a. I note from the affidavits sworn by the Tenant/Applicant that she does not deny that she was served with the notice to terminate her tenancy. I also note that the reason she gives for not filing her reference in opposition to the notice was because she did not know that she was required to file the reference.

b. Her affidavit EXAI and the further affidavit clearly demonstrates the desire on her part to oppose the notice to terminate her tenancy. Her absence from court when this matter was called out ad orders made has been sufficiently explained. The Tenant's industry cannot be gain said she filed her application to set aside the orders on the same day that the orders were made against her, on **28th October 2021.**

c. From the record, directions on the Tenant's application were issued on **29th October 2021.**

d. The basis for the Landlo9rd's notice to terminate tenancy dated **8th June 2021** is the failure by the Tenant to pay rent. I do note from the affidavits sworn by the Tenant that she is strong on the point that she has paid all the rent arrears owing to the Landlord together with the electricity bills.

e. I find the reasons given by the Tenant in failing to be in court and in failing to file the reference to be genuinely honest reasons. The Tenant appears in person.

f. Although I am alive to the statement that ignorance of the law is no defence, in the circumstances of this case, I am constrained to make the following orders;

i. That the orders issued **28th October 2021** in this matter are set aside.

ii. That the Tenant has fourteen days from the date of this ruling to file and serve her reference opposing the notice to terminate her tenancy dated **8th June 2021.**

iii. That the Tenant shall continue paying rent as and when it falls due.

iv. Each party shall bear its own costs.

HON. CYPRIAN MUGAMBI NGUTHARI

CHAIRMAN

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by **Hon Cyprian Mugambi Nguthari (Chairman)** this **15th March 2022** in the absence of the parties.

HON. CYPRIAN MUGAMBI NGUTHARI

CHAIRMAN

BUSINESS PREMISES RENT TRIBUNAL