



**Mwangi v Nderitu (Tribunal Case E070 of 2022)  
[2023] KEBPRT 1301 (KLR) (3 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1301 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E070 OF 2022  
CN MUGAMBI, CHAIR  
NOVEMBER 3, 2023**

**BETWEEN**

**DAVID KAMAU MWANGI ..... TENANT**

**AND**

**JANE NDERITU ..... LANDLADY**

**RULING**

1. The complaint filed by the Tenant in this matter concerns the landlord in that the landlord closed the Tenant's business premises on 21.5.2022 without any prior notice or court orders.
2. Contemporaneously with the filing of the complaint, the Tenant also filed a notice of motion wherein he seeks an order restraining the Respondent from in any manner interfering with his (Tenant's) tenancy. The Applicant has also sought an order that the Respondent re-open the suit premises and reinstates the Applicant therein failing which the Applicant be at liberty to gain entry into the premises by breaking into the same. The Applicant has also sought an order that the Respondent pays him Kshs. 31,000/= being the damages suffered by the Tenant.
3. Both parties have sworn affidavits and filed submissions in this matter.

**The Tenant's Depositions**

4. The Applicant has stated in his affidavit that he is a tenant in the Respondent's premises located at Naivasha Town where he pays a monthly rent of Kshs. 8,000/=.
5. The Tenant/Applicant further states that he has been faithfully paying his rent save for the month of May 2022 when he delayed rent payment due to harassment by the Respondent
6. The Tenant has stated that on 21/5/2022, the landlady locked the suit premises wherein the Tenant runs the business of a butchery and in the premises was meat stock valued at Kshs. 31,000/=.



7. The Tenant has stated that his tenancy is a controlled tenancy which cannot be determined without the leave of the Tribunal and whose terms cannot be altered except in accordance with the provisions of Cap 301 of the Laws of Kenya.
8. In his further affidavit, the tenant has denied being in any business partnership with the Respondent and has further denied receiving any notice to terminate tenancy.

### **The Respondent's Depositions**

9. The Respondent's affidavit sworn on 20.6.2022 at paragraph 2 thereof denies that there exists any tenancy relationship between the parties herein.
10. The Respondent has also stated in his said affidavit that the Applicant is his business partner in the nature of an Independent contractor who was engaged by the Respondent to run a butchery business to compliment the Respondent's bar business.
11. The Respondent has also stated that the tenant was not to sell mitura and soup in the suit premises which he was to run in accordance with the standards set by the Respondent with whom he would be sharing profits at not less than Kshs. 8,000/= per month.
12. The Respondent depones further that sometimes in April 2022, the Tenant breached the underlying commercial arrangement when he started selling mitura, soup and tripes in the suit premises, greatly upsetting the Respondents clientele and consequently, the Respondent verbally notified the tenant to leave the premises.
13. The Respondent has stated that the tenant through his employee collected all his items from the premises on 25.5.2022.
14. The Respondent also states in his affidavit that she could not be able to continue with the butchery business since the Applicant had not obtained a license to operate a butchery nor had the said butchery been inspected by the Nakuru County Health Inspectorate.
15. Finally, the Respondent has stated that the orders sought are incapable of being granted as the Tenant/Applicant is not a Tenant and he no longer has any items belonging to him in the suit premises.
16. The Respondent has also taken issue with the failure by the tenant to commence these proceedings by way of a plaint, verifying affidavit and other mandatory documents required under the procedure.

### **Issues for Determination**

17. The issues that arise for determination in this complaint and reference are the following:-
  - a. Whether there exists a controlled tenancy relationship between the parties herein and therefore whether this Tribunal has the jurisdiction to hear and determine this matter?
  - b. Whether the tenant/Applicant is entitled to the prayers sought in his application.

### **On issue A\_**

18. The Tenant in his supporting affidavit has stated that he has been a tenant in the suit premises paying a monthly rent of Kshs. 8,000/= since 2020. The tenant has stated that he has faithfully paid his rent to the Respondent and had a delay in payment only during the month of May. The Respondent's position is that the Applicant is her business partner as what she calls an independent contractor. It is



further the Respondent's position that the Applicant was to run a butchery in the suit premises and the parties would share profits with the Respondent not getting less than Kshs. 8,000/= per month.

19. I do not think the position taken by the Respondent is tenable. If indeed the parties herein were business partners, how would it be that the profits due to the Respondent were fixed at Kshs. 8,000/= per month without reference to the performance of the business? It is clear that the Respondent was not to bear any losses or benefits in excess of Kshs. 8,000/= per month, a most unlikely and unbelievable scenario in a business arrangement. I have also not seen any evidence of the Respondent's contribution to the business partnership between himself and the Applicant in terms of finances or material contribution.
20. Further, at paragraph 7 of the Respondent's affidavit, sworn on 20.6.2022, the Respondent states as follows:-

“Consequently, I gave her a verbal notice in April 2022 to leave the premises and even involved the area chief. He declined to vacate despite all these interventions.”
21. If indeed the Applicant was a business partner of the Respondent, I doubt that a verbal notice to suddenly vacate the premises would have been the most appropriate. One would have expected an organized dissolution of the partnership with the attendant taking of accounts and distribution of the property of the partnership business.
22. None of this happened. I am convinced the only reason the Applicant was given verbal notice to vacate the premises was because he was a tenant of the Respondent, business partners are not issued with notices to vacate businesses in which they are part owners.
23. I am therefore of the view and I do find, that the Applicant was a subtenant of the Respondent and the tenancy between them having not been reduced into writing, then, in line with the provisions of Section 2 of Cap 301, the tenancy therein is a controlled tenancy and the Applicant herein a protected tenant.

#### **On issue B**

24. The tenancy between the parties being a controlled tenancy as I have already found, the same is governed by the provisions of Cap 301 of the Laws of Kenya. In that regard, the verbal notice to vacate admittedly issued to the Applicant by the Respondent in April 2022, is not a valid notice. All notices to terminate a controlled tenancy under Cap 301 are issued pursuant to the provisions of Section 4(2) which is in the following terms:-

“A landlord who wishes to terminate a controlled tenancy or to alter to the detriment of the tenant any term or condition in or right, or service enjoyed by the tenant under such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.”
25. The Respondent in this case issued no such notice and I do find that the verbal notice was illegal and irregular. I therefore find that the closing of the Applicant's butchery by the Respondent to have been in contravention of the law as it was an attempted termination of the tenancy without following the procedure as to notice to terminate controlled tenancies. I therefore allow the Applicant's prayer 2 in the application.
26. I have not found any evidence to support the Applicant's claim for the payment of costs of Kshs. 31,000/= on account of spoilt meat stock and I reject the same.
27. The application dated 26.5.2022 is allowed in terms of prayer 2 and 5 thereof.



**CYPRIAN MUGAMBI - CHAIR PERSON**

11.2022

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3<sup>RD</sup> DAY OF NOVEMBER 2022**

**In the presence of;**

Mr. Macharia for the Respondent

David Kamau Mwangi- Tenant in person

