



**Angwenyi v Kariuki (Tribunal Case E763 of 2023)
[2023] KEBPRT 1379 (KLR) (15 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1379 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E763 OF 2023
M MAKORI, MEMBER
NOVEMBER 15, 2023**

BETWEEN

ZABLON ANGWENYI APPLICANT

AND

JOSEPH MUGA KARIUKI RESPONDENT

RULING

1. The present claim was filed vide an application dated 9/8/2023 and supported by the supporting affidavit of Zablon Angwenyi and which application was opposed vide a defense and respondents witness statement both dated 1st of September 2023 deposed to by Joseph Muga Kariuki on behalf of the Respondent/Landlord.
2. The Applicant further swore a Further replying affidavit and a Supplementary Affidavit dated 12/9/2023. The summary of the claim is adopted as presented by the pleadings filed and summarized by the Tribunal as below.
3. The Tenant's/Applicant's notice of motion dated 9th August 2023 seeks the following orders;
 - a. That this application is hereby certified as urgent and service be dispensed with at the first instance and the same be heard exparte.
 - b. That this honourable tribunal urgently intervenes to restrain the respondent from effecting an arbitrary increment in the monthly rent and from pursuing an unlawful eviction against the applicant pending hearing and determination of the suit.
 - c. That a restraining order be issued against the respondent, prohibiting any further harassment, intimidation or eviction attempts pending the resolution of this matter through proper legal channels.



- d. That the respondent/Landlord be compelled to stop any action of increasing rent and allow the tenant to continue with his business peacefully without interruption pending determination and hearing of the suit.
 - e. That the landlord and his agents be prohibited from unlawfully harassing, disconnecting electricity, disposing by and or in any manner with the clients quite occupation and lawful enjoyment of Ruai shipping centre plot number 105/5836 pending hearing and determination of this suit.
 - f. That the OCS of Ruai Police Station do assist in compliance of the orders.
 - g. That the Cost of the application be provided for.
4. Parties herein confirm that they are in a Landlord-Tenant Relationship which its inception is not well stipulated although both parties agree that the period lies between 4-6 years and where the Tenant has been staying on the suit property subject to the payment of rent.
 5. Both parties have conceded to the fact that there is no written legal tenancy agreement between them and such reference cannot be made to a specific document however they both speak to a similar line of facts except for issues that we shall seek to determine herein.
 6. The Landlord avers that the tenant occupies the entire ground floor of the premise which constitutes a two story building and that and has sole use of the lavatory for his business endeavors.
 7. That parties have both conceded in their pleadings that indeed there are no rent arrears and as such the core issue of determination remains the procedure and validity of the notice issued by the landlord.
 8. Therefore, the issues that arise for determination from the above summary of the respective parties' cases are, in my humble view, the following;
 - a. Whether the letter dated 4th July 2023 by the Respondent/Defendant amounted to an illegal increase of rent.
 - b. Whether the Tenant/Applicant is entitled to the orders sought in his application dated 9th August 2023.
 9. On Issue (a)

The letter dated 4th July 2023 by the Respondent at paragraph 2 is in the following terms;

“After careful consideration of various factors, including recent significant renovations recently done and our client’s general powers as the landlord Mr. Migua has made the decision to increase the tenancy rent payment by 15 percent. This means that the new rental amount payable will be 63,500.”
 10. If the Respondent wishes to increase the rent payable by the Tenant to Kshs 63,500/- he ought to have issued a notice for the increment of the said rent under section 4 (2) of Cap 301 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.”



11. The notice by the Respondent's does not conform to section 4(2) and (5) of Cap 301 and the same is therefore invalid and of no legal effect.

On issue (b)

12. It is therefore the finding of this tribunal that the tenants have established the principles espoused in the Locus Classicus case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 and are entitled to the orders sought in the application and the accompanying reference.
13. The upshot is that the application and reference is allowed on the following terms: -
- (a) The Landlord's notices for termination and increment of rent are hereby dismissed.
 - (b) The tenant's application dated 09/08/2023 and the accompanying reference is allowed in terms of prayers 4 and 5 with costs.
 - (c) The Landlord shall be at liberty to serve a proper notice (if need be).
 - (d) Each party shall bear their own costs

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF NOVEMBER, 2023

HON. MIKE MAKORI

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Shamulla for the landlord

In the absence of the Tenant

