



**Mirichu v Wachanga & another (Tribunal Case E156 of 2023)
[2023] KEBPRT 672 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 672 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E156 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
NOVEMBER 24, 2023**

BETWEEN

AMOS NJOROGI MIRICHU TENANT

AND

JAMES MWANGI WACHANGA 1ST RESPONDENT

SIMON MATHINI 2ND RESPONDENT

RULING

A. The Dispute Background

1. The Tenant/Applicant moved this Tribunal *vide* a reference under section 12 (4) of the [Landlord and Tenant \(Shops, Hotels and catering establishment\) Act](#) Cap 301 dated 25th August, 2023 wherein he complained that the landlord herein has been harassing and threatening him with the intention of evicting him from the suit premises to a smaller premise which cannot be compared to the one he is currently using.
2. The tenant simultaneously filed a Notice of Motion dated 25th August, 2023 wherein he sought the following orders; -
 - a. That the application be certified urgent.
 - b. That the landlord by himself, his servants and/or agents are hereby prohibited by the orders of this honorable tribunal from harassing, intimidating and illegally evicting and/or interfering with the applicant's peaceful occupation at Room 1 Ahero Plot no 1/3459 Bahati pending the hearing and determination of the case inter-partes.
 - c. That the Respondent/Landlord be and is hereby restrained by the order of this tribunal from removing the tenant/applicant from house no 1 to house no 11, pending the hearing and determination of this matter inter-partes.



- d. That the O.C.S Bahati Police Station to ensure compliance with the orders and that peace prevails.
 - e. That the cost of this application be provided for.
3. The application is supported by an affidavit of even date in which the tenant/applicant deposed as follows; -
- i. That the 1st respondent herein is his landlord and the 2nd respondent is his agent/caretaker of Plot No.1/3459 Ahero where he runs his Mini-supermarket at shop Number One.
 - ii. That on 3rd August, 2023, he paid ksh 120,000 to the 2nd respondent being rent deposit of 6 months, ksh 60,000 rent of 4 months, ksh 40,000 at a rate of ksh 10,000 per month, agreement fees of ksh 10,000 and agent fees of ksh 10,000. Certified copies of the transactions from NCBA Bank to the 2nd respondent are annexed as ANM001.
 - iii. That the 2nd respondent later gave him access to the premises where he started constructing and partitioning the premises in preparation for business and later on filled it up with stock and kick-started his business.
 - iv. That the 2nd respondent/caretaker later on brought an agreement from the office that stated that he had paid ksh 70,000 and not ksh 120,000 which was already signed on his behalf and he couldn't accept signing a document that does not state facts. The agreement also states that he had paid for House no 11 at a rate of ksh 8,000 not HOUSE no 1 as they had earlier agreed and already occupied. A copy of the agreement from the respondents is annexed as ANW002.
 - v. That the 1st respondent herein upon learning that the tenant was occupying house no 1 and had paid for that, started harassing and intimidating him to vacate the suit premises or move to House no 11 without considering the money invested in the business. The landlord went ahead to report the tenant to the O.C.S Bahati Police Station for unlawful occupation of the premises. A copy of the summon from the police station is annexed as ANM003a. The tenant was compelled to move into shop 11 which is smaller and his stock cannot fit. A copy of the agreement signed on 25th August is annexed as ANM003b.
 - vi. That the 1st respondent denied receiving ksh 120,000 from the 2nd Respondent but acknowledged receipt of ksh 70,000 as written in the agreement. The 2nd respondent later on deposited ksh 40,000 to the applicant and has remained with ksh 10,000 that he has pledged to pay.
4. On 30th August, 2023 the court granted interim orders against the respondents pending hearing and determination of this suit.
5. The application was opposed through a replying affidavit dated 13th September, 2023 in which the respondent deposed as follows; -
- i. That on 3rd August, 2023 the tenant approached him wishing to let out shop no 11 in Ahero Estate for him to put up a Minimart with an agreed rent of ksh 8,000 per month, agency fee of ksh 10,000 as well as 3 months deposit of ksh 24,000.
 - ii. That pursuant thereto, the arrangement was reduced into writing and the above sums paid as well as advocates fee of ksh 10,000 and 3 months' rent of ksh 24,000 plus part paid rent of ksh 2,000 towards November rent, all totaling to a sum of ksh 70,000. The tenant further made payment of ksh 70,000 into the landlord's account at Family Bank and duly delivered the cash



deposit slip to the landlord. A copy of the cash deposit slip indicating the depositor to be the tenant herein is annexed as JMW2.

- iii. That the tenant has never paid a sum of ksh 120,000 as alleged or at all and that the annexure only shows a sum of ksh 120,000 sent to an unknown destination.
 - iv. That all along both parties were clear that the unit being rented was shop no 11 and that House no 1 was being used as storage area which contained assorted building materials belonging to another tenant, Gijam Prime Limited who are up to date with their rent payments.
 - v. That shop no 1 which is slightly more spacious is reserved at a rent of ksh 12,000 in which the tenant forcefully put up shelves, moved in his items and completely refused to move out. The tenant is now occupying shop no 1 while holding up shop no 11 which was the unit rented.
 - vi. That upon severally asking the tenant to move out of the unit, he continues to occupy forcefully, the landlord reported the matter as a trespass at Bahati Police Station leading to the summon issued on 25th August, 2023 and the filing of this matter before this tribunal.
 - vii. That the parties entered into the agreement voluntarily which was duly formalized.
6. The tenant/applicant filed a supplementary affidavit dated 25th September, 2023 in which he deposed as follows; -
- i. That he did not have any direct interactions with the Landlord/1st respondent as sworn in the Replying Affidavit. He dealt with the 2nd respondent herein who allocated him shop no 1.
 - ii. That at the time the caretaker was allocating him the shop, there was no labelling of the shops in numbers and the same were only labeled after her told them that he is moving the matter to court.
 - iii. That the landlord is being dishonest by accepting that he received payment of ksh 70,000 through his caretaker, and at the same time refutes receiving ksh 120,000 alleging that the tenant sent it to unknown destination yet the same was sent to the caretaker who was acting on his behalf as an agent.
 - iv. That the shop he is currently using was not occupied when he went there for shop hunting and that the 2nd respondent is the one who opened the shop for him to take a look, thereby liking it because it was spacious for his mini-supermarket shop thus embarked on renovating and making it fit for his business.
 - v. That all through the renovations which took 4 days, the 1st and 2nd respondents were aware and the 2nd respondent brought workers who renovated the shop and therefore it is a misinterpretation of facts to state that he forcefully set up shelves as alleged by the landlord.
 - vi. That it is completely impossible for the 2nd respondent to allow him to store materials and goods in another shop herein shop 1 which the landlord claims was being used as storage for a tenant known as Gijam Prime Limited whom had purportedly paid rent to December 2023.
 - vii. That he is willing to pay the rent of ksh 12,000 per month as suggested by the landlord believing that it was an error for the 2nd respondent to quote ksh 10,000.
 - viii. That to further demonstrate the ill motive of the 1st respondent herein, he has filed a suit against the tenant in Nakuru Bprt E159 of 2023 *James Mwangi Wachanga T/A Crossland Insurance & Commercial Agency v Amos Njoroge Miricho* on 31st August, 2023 through another firm of advocates, knowing very well about the existence of this matter.



7. We shall consider the affidavits filed by the parties while dealing with the issues for determination.

B. List of Issues for Determination

8. The following are the issues for determination;
- Whether the tenant is entitled to the orders sought in the application dated 25th August, 2023.
 - Who shall bear the costs of the application?

Issue (a) Whether The Tenant Is Entitled To The Orders Sought In The Application Dated 25th August, 2023

9. The tenant approached this Tribunal fearing the possibility of an illegal eviction from the suit premises (Shop no 1) and being forced to move to a smaller premise (Shop no 11) which cannot fit all his goods.
10. The tenant in his supplementary affidavit dated 25th September, 2023 swore that he is willing to pay the rent of ksh 12,000 per month as suggested by the landlord as and when he is requested to and has acknowledged that it was an error on the 2nd respondent/caretaker's side for allowing him to occupy the suit premises at the rent of ksh 8,000.
11. We find that the caretaker was acting as an agent of the 1st respondent/landlord and therefore permission granted to the tenant to occupy the suit premises, Shop no 1 is binding upon the landlord. The 2nd respondent/caretaker narrates the sequence of events in his apology letter to the landlord dated 14th August, 2023 annexed as JMW4 where he states as follows in paragraphs 2 and 3; -

“(2) He called me and when I looked at it I allowed him to store it in shop no 1 as we fetched for a solution.
.....

(3) Mr Amos found the shop considerably spacious and immediately set up a shelf and started business. When I got back I found him doing business and advised him to organize we come and see you for a request of shop exchange.”

12. As such, this Tribunal is duty bound to protect the tenant herein from illegal eviction as the landlord herein has not presented any evidence of a Notice of Termination of tenancy.
13. In the case of *Manaver N Alibhai t/a Diani Boutique v South Coast Fitness & Sports Centre Limited* Civil Appeal no 203 of 1994 it was held as follows: -

“The Act lays down clearly in detail, the procedure for the termination of a controlled tenancy. Section 4(1) of the Act states in very clear language that a controlled tenancy shall not terminate or be terminated and no term or condition in or right or service enjoyed by the tenant of any such tenancy shall be altered otherwise than in accordance with specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the tenant. The notice must also specify the ground upon which termination is sought. The prescribed notice in form A also requires the landlord to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice.”

14. A termination of tenancy notice ought to comply with the dictates of Section 4(2) of Cap 301 and it is in this regard that we find that there lacks a proper Notice to terminate tenancy. Having found that



the Respondents have not issued any proper notice to terminate tenancy, we find that the prayers of injunction against the Landlord or his agents as merited.

15. We however note that the landlord has a right to terminate the tenancy in accordance with Cap. 301, Laws of Kenya and by granting the injunction sought by the tenant, the tenant is not absolved from termination of his tenancy.

16. Section 12(4) of Cap. 301, Laws of Kenya gives this Tribunal the following powers: -

“4. In addition to any other powers specifically conferred on it by or under the Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant and may make such order thereon as it deems fit”.

17. The foregoing legal provision empowers this Tribunal to determine the issues raised by the tenant as well as those raised by the landlord. The landlord in his affidavit has deposed that he was not aware that the tenant had occupied the suit premises and that the arrangement that has led to this dispute was between the tenant and the 2nd respondent/caretaker. Even though the 2nd Respondent/caretaker was acting as an agent of the landlord, we find that the landlord is entitled to issue a proper notice under section 4(2) of Cap. 301, Laws of Kenya if he desires to do so.

Issue (b) Who Shall Bear The Costs Of The Application?

18. As regards costs, the same are in the Tribunal's discretion under section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall award costs to the tenant/applicant.

C. Orders

19. In conclusion, the following final orders commend to us;

- a. The application dated 25th August, 2023 is hereby allowed as prayed.
- b. The landlord is granted leave to issue a proper notice of termination of tenancy upon the tenant if he so wishes in the prescribed form under section 4(2) of Cap. 301, Laws of Kenya.
- c. The tenant is awarded costs assessed at ksh 15,000 to be offset against rent.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH DAY OF NOVEMBER 2023.

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

HON GAKUHI CHEGE

(MEMBER)

In the presence of:

Ms. Wairimu for Landlord

No appearance for tenant.

