



**Morande v Abdi & another (Tribunal Case E470 of 2023)  
[2023] KEBPRT 1320 (KLR) (13 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1320 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E470 OF 2023  
CN MUGAMBI, CHAIR  
SEPTEMBER 13, 2023**

**BETWEEN**

**EDINA MORUMBASI MORANDE ..... TENANT**

**AND**

**FATUMA ABDI ..... LANDLORD**

**AND**

**BW YOUNG INVESTMENT ..... AGENT**

**RULING**

**Introductions**

1. The tenant's application dated 10.5.2023 seeks orders restraining the Respondents from in any manner interfering with the Applicant's and the sub-tenant's tenancies on the entire premises known as L.R. No. Ongata Rongai RC BI88 and also seeks for a declaration that the notice issued by the Respondents to the Applicant is null, void and of no consequence. The Applicant has also sought for the assistance of the OCS Ongata Rongai police station in the enforcement of the orders sought.

**The Tenant's depositions**

2. The tenant's affidavit in support of the application may be summarized as follows;-
  - a. That she has been a tenant in the suit premises since 19.9.2022 and has had no issues with the 1<sup>st</sup> Respondent/landlord until the 2<sup>nd</sup> Respondent/agent came into the picture.
  - b. That the 2<sup>nd</sup> Respondent has been harassing the tenant, her clients and sub-tenants.
  - c. That on 19.4.2023, the 2<sup>nd</sup> Respondent issued a notice to vacate to the tenant/Applicant with the sole intention of taking over the sub-tenant's.



- d. That the tenant/Applicant has no problem paying rent to the 1<sup>st</sup> Respondent.
- e. That the 2<sup>nd</sup> Respondent has pursuant to the notice to vacate, started harassing the Applicant and interfering with her peaceful occupation and enjoyment of the suit premises.
- f. That the tenant is apprehensive that the 2<sup>nd</sup> Respondent may move in and carry out eviction any time unless restrained by the Tribunal.

### **The Landlord's depositions**

- 3. The replying affidavit sworn by the 1<sup>st</sup> Respondent may be summarized as follows:-
  - a. That the tenant is the author of her own misfortunes by not paying rent on time and always being in rent arrears.
  - b. That the tenant pays her rent late and not in full and has rent arrears in the sum of Kshs. 30,000/=.
  - c. That the reference herein offends the rules of natural justice.
  - d. That the landlord stands to suffer irreparable harm if the orders earlier issued by the Tribunal are not reviewed and vacated.
  - e. That the tenant has not come to court with clear hands.

### **Analysis and determination**

- 4. The only issue that arises for determination is whether the tenant is entitled to the prayers sought in her application.
- 5. The lease agreement governing the parties herein is the one dated 19.9.2022. Although the term there is for a period of five (5) years and three months, clause 3 thereof provides as follows:-

“A party wishing to terminate this lease shall give a one year notice.”

The tenancy between the parties is therefore a controlled tenancy within the meaning ascribed thereto by Section 2 of Cap 301.

- 6. The tenant's complaint is that the landlord has issued her with an illegal notice to terminate her tenancy. The tenancy between the parties being a controlled tenancy, the same can only be terminated in accordance with the provisions of Cap 301 of the Laws of Kenya. In this regard, Section 4(1) and 4(2) of Cap 301 respectively provides as follows:-

“Section 4(1) - notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall 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 the following provisions of Laws Act.”

Section 4(2)- 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.

- 7. The prescribed form is FORM A in the Schedule to the Act. The notices to the tenant dated 19.4.2023 and the one written to Samira House Tenants dated 9.5.2023 are not the notices contemplated



under Section 4(2) of Cap 301. They are not in the prescribed form and do not meet the statutory requirements of section 4(4) and 4(5) of Cap 301. They are invalid notices and are of no legal consequence.

8. If the 1<sup>st</sup> Respondent is desirous of terminating the Applicant's tenancy, then she is obligated by the law to issue the notice to terminate tenancy under Section 4 of Cap 301.
9. I do note that the landlord has deponed that the tenant is in rent arrears amounting to Kshs. 30,000/= whereas the tenant has not sworn a further affidavit to deny or confirm this, I do note that the tenant has in his affidavit deponed that he has no rent arrears. As none of the parties have filed a statement of accounts, I am unable to ascertain what rent, if any, is owing to the landlord.

#### **Final disposition**

10. In the final analysis, I do find merit in the tenant's application and do hereby make the following orders;-
  - a. That the Respondents be and are hereby restrained from in any manner illegally interfering with the Applicant's tenancy on the entire premises known as L.R. No. Ongata Rongai TCB 188.
  - b. That the notices dated 19.4.2023 and 9.5.2023 issued to the tenant by the 2<sup>nd</sup> Respondent are null, void and of no legal consequence.
  - c. That the tenant is ordered to clear all rent arrears (if any) due to the landlord.
  - d. That each party shall bear their own costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13<sup>TH</sup> DAY OF SEPTEMBER 2023.**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

9.2023

In the presence of; Ms. Chepkemai for the Applicant/tenant

In the absence of the landlord/Respondent

