



**Keya & another v Mwasia (Tribunal Case E145 of 2023)  
[2024] KEBPRT 879 (KLR) (22 May 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 879 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E145 OF 2023  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
MAY 22, 2024**

**BETWEEN**

**KISALI KEYA & OGADA KEYA ..... APPLICANT**

**AND**

**ERICK MWASIA ..... RESPONDENT**

**JUDGMENT**

1. These proceedings were triggered by the notice of termination of tenancy dated 28<sup>th</sup> august 2023 issued by the Landlord/Respondent namely Kisali Keya and the late Ogada Keya. The grounds on which the termination was sought were stated to be:-

“I want to do major renovations to the business Premises, I request the rent Tribunal Court and OCS Mbale Police Station to order the Tenant to pay all rent arrears and vacate the Business Premises for renovation to start.
2. The said notice was anchored on Section 4(2) of the [Landlord and Tenant \(shops, Hotels and Catering Establishments\) Act](#) (Cap. 301) hereinafter.

“the Act” with the notice was also a letter of the same date by the Respondents emphasizing the notice to terminate and clarifying the rent in arrears which was for the months of August to October 2023.
3. On being served with the notice, the Tenant/applicant filed the reference dated 22<sup>nd</sup> September 2022. In it he denounced the Respondents as his Landlords on the premises constructed on Title No. S/ Maragoli/Bugonda/2119. It was his case that the said land belonged to the late Levi Aviono Keya and that on his death it transited to his wife Florence Keya who was his lawful landlord.



4. The Tenant also filed what her described as Affidavit in protest to notice of termination or alter terms of Tenancy. The same is dated 30<sup>th</sup> November 2023. He further filed a replying affidavit sworn on the 9<sup>th</sup> January 2024, purportedly in response to the landlord's supporting Affidavit dated 1<sup>st</sup> December 2023.
5. Finally, the Tenant Mr. Erick Mwanzia testified in court as TW1 and called Mrs Florence Mkiza the interested party as his witness. She testified as TW2. He thereafter closed his case.
6. On their part, Mr. Kisali Keya and the late Oganda Keya filed the notice of motion application dated 1<sup>st</sup> December 2023. The same was supported by their joint affidavit of the even date. After the death of Oganda Keya, Mr. Kisali Keya filed the Affidavit sworn on the 2<sup>nd</sup> April 2024. Finally he testified as LW1 and called three other witnesses. These are:-
  - a. Edith Kavochi Keya who testified as LW2.
  - b. Stephen Inabura Keya as LW3 paid
  - c. Isaiya Afendi Wangeleka as LW4.
7. On her part, Florence Mkiza the interested party filed the notice of motion Application dated 17<sup>th</sup> January 2024. In it she sought to be enjoined in the proceedings as the lawful landlord and for the landlords/Respondents to be restrained from interfering with the Tenant's tenancy on her late husband's property. The prayer to be joined as an interested party was granted on the 26<sup>th</sup> December 2024.
8. Earlier on the 21<sup>st</sup> December 2023, the Interested party had filed a witness statement in support of the case for the Tenant. From all the pleading herein before laid out, I will briefly state the respective cases for the Tenant/Applicant, the landlord/Respondent and the interested party.
  - A. The case for the Tenant/applicant Mr. Erick Mwanzia is that:-
    - i. He became a Tenant at the demised premises in 2018 and was paying rent though an agent of the landlord's mother.
    - ii. He had been paying rent at Kshs.19,000/- per month to the interested party (Annexed receipts for payment of rent for October, November, December, 2023 and January, 2024 mark "EM1").
    - iii. Only recognized the interested party as his landlord being the registered owner of Title No. S/Maragoli/Bugonda/2119.
    - iv. The notice of termination by the Landlords dated 28<sup>th</sup> August 2023 was illegal and a disguise to evict him.
    - v. He was not in any rent arrears and all the other tenants had not been issued with such notices of termination.
    - vi. Had never pad rent to the landlords or their agents.
9. He therefore sought for the protection of this court by the dismissal of the landlords termination notice aforesaid and their notice of motion dated 1/12/2023.
10. The landlord's evidence and that of his witnesses LW2, LW3 and LW4 can be summarized as follows:
  - i. That the demised premises though built on Title No. S/Maragoli/Bugonda/2119 belonged to the family of the late Johnstone Keya.



- ii. The late Levi Aviono Keya was only bequeathed the land as his inheritance but the demised premises remained family property.
  - iii. The Tenant was paying rent for the demised premises to the landlord's late mother until 2020 when she died and thereafter the rent was either collected by the landlord or his niece Edith Keya and shared among the brothers.
  - iv. There were mpesa statements showing statement of rent to either Kisali Keya or Edith Keya by the Tenant until, august 2023 when he refused to pay rent to date( "Annxture KK1" are mpesa statements).
  - v. The Tenant therefore required to pay all the rents in arrears and vacate the premises to allow for major renovations.
  - vi. The family had no claims on title No. S/Maragoli/Bungoma/2119 which rightfully belonged to the interested party as the widow of the late Levi Aviono Keya.
11. The interested party M/S Florence Mkiza on her part testified that:-
- i. She was the widow and administrator of the estate of the late Levi Aviono Keya vide letters of administration issued to her vide succession cause No. 169 of 2023 filed at the Vihiga SPM'S Court- (annexture "FM1").
  - ii. The Tenant was not in any rent arrears and the landlord should be restrained from interfering with him.
  - iii. She was being paid Kshs.15,000/- as rent.
12. From the foregoing and taking regard to all the pleadings by all the parties and the oral evidence rendered in court, it is our view that the issues for determination are the following:-
- A. Who is the legal landlord of the demised premises.
  - B. Whether the notice of termination dated 28<sup>th</sup> August 2023 is lawful.
  - C. Who should bear the costs of this suit.

**Issue No. A who is the legal landlord of the demised premises.**

- 13. The evidence on record and which is not disputed is that Title No. S/Maragoli/Bugonda/2119 belongs to the late Levi Aviono Keya husband to Florence Mkiza and brother to the landlord. It is a title that he inherited from his late father mzee Johnstone Keya.
- 14. It has also not been disputed that the demised premises were constructed by the landlord and his late father and that all through the life of the landlord's father and mother, they were the undisputed landlords in respect of the demised premises.
- 15. From materials placed on record and in particular the mpesa statements marked as annexture KK1 and the receipts issued to the Tenant Mr. Erick Mwasia Marked as "K103" in the landlord's affidavits, the Tenant has been paying rent directly to the landlord and sometimes through Edith Kagochi Keya.
- 16. We agree with the landlord that the Tenant only ceased paying rent to them at Kshs.17,000/- per month effective, July, 2023. Indeed the Tenant never claimed to have paid any rent to the interested party before the month of October, 2023.



17. The court was able to observe the interested party while rendering her oral evidence and it was apparent that she was not conversant with the dealings relating to the demised premises. She could not tell what rent payable was being paid to her, and when she was pushed to give a figure for the rent payable she indicated that it was Kshs.15,000/-. On his part the Tenant displayed rental payment receipts showing that he was paying Kshs.19,000/- per month.
18. In our view, the Tenant is taking advantage of the divisions within the family of the late Johnstone Keya. We doubt that he has been paying rent as required for the premises and is obviously happy with the confusion reigning within the estate.
19. The act under Section 2(1) thereof defines a landlord as
- “In relation to a tenancy, means the person for the time being entitled as between himself and the tenant, to the rents and profits of the premises payable under the terms of the tenancy”.
20. The persons entitled to the rents of the demised premises as erected on title No. S/Maragoli/Bugonda/2119 has been the landlord and the late Oganda Keya for the benefit of the entire Johnstone Keya family and we believe the same includes the late Levi Aviono now represented by his widow Florence Mkiza. The Interested Party.
21. Through the interested party has letters of administration in relation to the title on which the demised premises is constructed being title No. S/Maragoli/Bugonda/2119. The same do not in our view confer to her any rights as a landlord. The rightful landlord of the demised premises is Kisali Keya with Florence Mkiza being a beneficiary thereof.
22. In the case of Ramadhan Mohammed Ali – vs- Hashim Salim Ghanim (2015) eKLR the court in circumstances like the present one held that:
- “There is no dispute that the Respondent was in relation to the payment of rent, the Appellant’s landlord, and from the evidence before the tribunal he is entitled to rents and profits from the suit property as part of the deceased’s estate. As such, it was not compulsory for him to apply for and take out a grant of letters of administration under Section 45 of the Law of Succession Act before giving the notice of termination of tenancy. The Tribunals finding at page 3 of its judgement is correct that:
- “Ownership is not an issue that is relevant under the landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301 Laws of Kenya”.
23. We therefore determine that Kisali Keya is the lawful landlord in relation to the premises erected on Title No. S/Maragoli/Bugonda/2119.

**Issue No. B- Whether the notice of termination dated 28<sup>th</sup> August 2023 is lawful.**

24. In our view, the notice is complaint with section 4(2) of the Act which provides that:
- “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 tenancy, shall give notice in that behalf to the tenant in the prescribed form”.
25. The prescribed form alluded to is provided for under Regulation 4(1) of the Regulations to the Act. It provides that:-



- A. Notice under Section 4(2) of the Act by a landlord shall be in form A in the schedule to these Regulations”.
26. However the grounds for termination as cited by the landlord in our view do not satisfy the requirements of the law. The first ground is on non payment of rent. It is the evidence of the landlord that the Tenant ceased payment of rent in July, 2023. The notice of termination is dated 28<sup>th</sup> August 2023. It is therefore clear that the Tenant was not in arrears for at least 2 months at the time the notice was issued.
27. Section 7(1) (b) provides as a ground for termination where:-
- “The tenant was defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable”.
- This ground was therefore not available to the landlord.
28. The 2<sup>nd</sup> ground for termination was that the Tenant was to vacate for renovations to be undertaken on the demised premises. The landlord did not specify what renovations required to be carried out, any documents to demonstrate the renovations required, the availability of finances and the timelines for such renovations.
29. In any event, “renovations” as a ground for termination is not available to a landlord. The same can be undertaken and the Tenant is thereafter restored into the renovated premises. Section 7(1)(f) which the landlord seems to have based his termination notice on provides that:-
- “On termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof and that he could not reasonably do so without obtaining possession of such premises”.
30. The landlord has obviously not satisfied this requirement. Indeed evidence on record is that the other tenants in the premises had not been issued with such notices. It seems the notice herein was purely informed by the non-payment of rent by the Tenant. The court notes that the tenant failed to pay rent effective the month of July, 2023 and that the notice was issued on the 28<sup>th</sup> August 2023.
31. In the case of Embu Gaturi Housing co-operative Society – vs- George Thuo T/A Paramount Café and 2 Others the court held that:-
- “from the evidence on record, it is clear that the Appellant had no genuine, firm and settled intention to demolish the premises and reconstruct it”.
32. This court is of similar view and our determination that the notice of termination dated 28<sup>th</sup> August 2023 is unlawful and of no legal effect.
33. On costs, it is in our further view that the notice of termination and the attendant reference and applications would not have been necessary if the Tenant had not been mischievous and met his cardinal obligations as a tenant. He would therefore bear the costs of the suit.
34. In the final analysis we make the following orders:-
- i. That the landlord Mr. Kisali Keya is the lawful landlord of the premises erected on Title No. S/Maragoli/Bugonda/2119.



- ii. That the Tenant shall pay all the rents in arrears effective July, 2023 at Kshs.19,000/- per month unless there is proof of payment of any part thereof to any member of the family of the late Johnstone Kenya in exclusion of Mrs Florence Mkiza the interested party.
- iii. That this matter shall be mentioned on the 27/6/2024 when the parties should have reconciled the rent account and for further directions.
- iv. That for clarity, the rent for the demised premises is payable to Mr. Kisali Kenya as was the case in the period preceding July,, 2023.
- v. The Tenant shall pay costs assessed at Kshs.10,000/-.

Those are the orders of the court.

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22<sup>ND</sup> DAY OF MAY, 2024.**

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI - PANEL CHAIRPERSON MEMBER  
BUSINESS PREMISES RENT TRIBUNAL BPRT**

**JUDGEMENT DELIVERED ON THE 22<sup>ND</sup> MAY 2024 IN THE PRESENCE OF THE LANDLORD  
AND IN THE ABSENCE OF THE TENANT.**

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI - PANEL CHAIRPERSON MEMBER  
BUSINESS PREMISES RENT TRIBUNAL BPRT**

