



**Okoth v Prime Spot Enterprises Ltd (Tribunal Case E446 of 2023)  
[2023] KEBPRT 676 (KLR) (2 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 676 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E446 OF 2023  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
NOVEMBER 2, 2023**

**BETWEEN**

**IRENE OKOTH ..... APPLICANT**

**AND**

**PRIME SPOT ENTERPRISES LTD ..... RESPONDENT**

**RULING**

1. The tenant approached this Tribunal by way of a complaint dated May 5, 2023 claiming that the landlord intended to terminate her tenancy without following the due process. She also complained that the landlord was damaging her property to frustrate and force her out. The said complaint is based on provisions of section 12(4) of [Cap. 301](#), Laws of Kenya.
2. The tenant simultaneously filed a motion dated May 2, 2023 seeking stay of execution of the tenancy and restraining orders of injunction against the Landlord from unlawfully, illegally or arbitrarily evicting, damaging her property or doing anything that affected her tenancy over Land Reference No.12715/244.
3. The application is supported by the tenant's affidavit of even date and the grounds set out on the face thereof. The tenant's case is that on April 10, 2023, the Landlord served her with a notice of termination of tenancy which is not proper under the law and consequently of no effect. The said notice required the tenant to vacate the suit premises by May 12, 2023.
4. On April 7, 2023, the Landlord damaged the tenant's storage tanks and disconnected them from her purifying machines thereby frustrating the business with intention of forcing her out. The landlord also damaged the tenant's fence which secured the water tanks and removed them from their position and threw them away.
5. Among the documents annexed to the supporting affidavit is a copy of the purported termination notice marked "10-2". According to the tenant the notice is not proper in law as it is not in the



standard form under the Act. She has also annexed as “10-3 (a) –(h)” photographs of damaged pipes disconnected from the water tanks. The photographs of the damaged water tanks are annexed as “10-4 (a)-(d)”.

6. Interim orders were given on May 9, 2023 pending hearing inter-partes on 5<sup>th</sup> June 2023. Upon being served with the application, the landlord filed a replying affidavit sworn on May 29, 2023 by its Chief Executive Officer one Wanjohi Ndagu wherein it is deposed that the parties entered into a tenancy agreement in October 2022 which inter-alia provided that the tenant shall not make alteration in the said premises or make any improvement permanent or temporary without the consent of the owner.
7. The tenancy agreement further provided that the tenancy agreement can be terminated by the landlord giving a month’s notice to the tenant and vice versa. The tenant is accused of making alterations to the business premises by building a structure behind it without the landlord’s approval contrary to clause 4 of the tenancy agreement.
8. The landlord issued several warnings to bring down the structure erected without its consent but the tenant ignored. As a result, the landlord issued a 30 days notice dated April 10, 2023 for termination of the tenancy.
9. On April 26, 2023, the landlord issued a letter to the tenant demanding demolition of the illegal structure by April 28, 2023 failing which the same would be removed at the tenant’s cost. The tenant ignored the notice prompting the landlord to undertake the demolition peacefully and without damage to the property.
10. On May 15, 2023, the tenant is accused of digging a “terrace” from her house to the business premises without the landlord’s approval and the latter was compelled to remove the pipe and fill the terrace. The matter was reported to Syokimau Police Station.
11. According to the landlord, the tenant cannot flaunt the terms of the tenancy agreement and then come to court to seek for redress for the said breach and expect to be shielded from her own wrong doings as he who comes to equity must come with clean hands. The landlord thus contends that the tenant is not entitled to the reliefs sought.
12. The landlord filed a further affidavit sworn on 31<sup>st</sup> may 2023 by Wanjohi Ndagu annexing photographs marked “WN-1” showing the trench dug by the tenant, water tanks and water pipes in violation of the terms of tenancy.
13. The tenant is accused of abusing and misusing this Tribunal’s order to engage in wanton acts of destruction of the landlord’s property in what amounts to abuse of court process.
14. The tenant filed a supplementary affidavit sworn on July 31, 2023 wherein it is deposed that she entered into the business premises in November 2021 when one Wanjau was the landlord.
15. The current landlord was introduced to the tenant in August 2022 and is thus not well versed with the details of the earlier engagement. The landlord introduced a lease which he presented to the tenant on October 3, 2022 for signing and she obliged. By then, the two shops, a butchery and water shop were fully operational and all the structures purported to be illegally erected were in place.
16. In April 2023, the landlord served a one month termination notice and before the end of the notice demolished the existing structures in the business premises. The termination notice offends section 4 of [\*Cap. 301\*](#) according to the tenant. The tenant denies being in breach of the tenancy agreement as the structures complained of were in place before the new landlord came in.



17. She denies receiving warnings whether verbal or written from the landlord as no new structures were being put up to warrant such warnings. She accuses the Landlord of malice in undertaking the demolitions which were intended to frustrate her.
18. She accuses the landlord of engaging in a smear campaign against her business and of being determined to unprocedurally evict her from the business premises to enable her business rival to benefit. The tenant denies being in breach of terms of the tenancy agreement. She denies being in any rent arrears.
19. The application was directed to be canvassed by way of written submissions. Both the Applicant's and Respondent's counsel filed submissions.
20. We are required to determine the following issues in this matter:-
  - a. Whether the termination notice issued by the landlord to the tenant on 10<sup>th</sup> April 2023 is valid or not.
  - b. Whether the tenant is entitled to the reliefs sought in the complaint and application herein.
  - c. Who is liable to pay costs?.
21. There is no dispute that the parties herein entered into a controlled tenancy which is protected by the provisions of the [\*Landlord and Tenant \(shops, Hotels and Catering Establishments\) Act\*](#), Cap. 301, Laws of Kenya. The said statute was enacted for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto.
22. Section 4(2) of the said Act allows 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 enjoyed by the tenant to give notice to the tenant in the prescribed form. The prescribed notice is Form C which is to be found in Regulations to the Act under Regulation 5.
23. Section 4(4) of [\*Cap 301\*](#), Laws of Kenya provides as follows:-

“(4) No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party as shall be specified therein.”
24. The notice served upon the tenant is not in the prescribed form and is for a period of only one (1) month. It is therefore invalid and of no legal effect in line with the decisions cited in the case of [\*Francis Mutua Mulinge t/a Kitui Uniform v Kitui Teachers Housing Cooperative Society Limited\*](#) (2017) eKLR.
25. The landlord has admitted interfering with the tenant's use of the premises by uprooting water pipes, removing water storage tanks and disconnecting water supply to the business premises in the tenant's occupation. This was done without any court order or legal backing. The landlord ought to have moved this Tribunal to obtain orders to stop the alleged breach of the tenancy agreement by the tenant but decided to take the law into his own hands in an act of impunity and disregard of the provisions of [\*Cap. 301\*](#), Laws of Kenya. If the Landlord was aggrieved by the tenant's actions complained about, he ought to have sought orders of this Tribunal and he cannot be heard to justify the illegal actions.



26. We are fortified in that regard by the decision of the court of appeal in the case of *Thomson smith Aikman & others v Muchoki & others* (1982) eKLR at page 4/6 wherein Madan J.A (as he then was) held as follows:-

“ .....the court ought to never to condone and allow to continue a flouting of the law. Those who flout the law by infringing the rightful title of others and brazenly admit it ought to be restrained by injunction. If I am adding a new dimension for the grant of an interlocutory injunction, be it so. Equity will not assist law- breakers”.

27. In the premises, we are persuaded that the tenant has established the principles for the grant of the orders of injunction sought in the application and complaint herein. It is our view that she has established a prima facie case and that the landlord’s acts being illegal amounts to irreparable harm which this Tribunal is enjoined to prevent under Cap. 301, Laws of Kenya.

28. We have considered the decisions cited by counsel for the landlord in the cases of *Giella v Cassman Brown & Co. Ltd* (1973) E.A 358, *Nguruman Limited v Jan Bonde Nielsen & 3 others* (2014) eKLR, *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* (2003) eKLR and note that they are all binding and applicable to this case. The tenant herein has fully met the principles espoused in the said cases and we have no doubts in our minds that she is entitled to the injunction orders sought against the landlord.

29. As regards costs, the same are at the discretion of this Tribunal under section 12(1) (k) of *Cap. 301*, Laws of Kenya but always follow the event unless for good reasons otherwise ordered. We have no reason to deny costs to the tenant being the successful party.

30. In conclusion, the following final orders commend to us under section 12(4) of *Cap. 301* Laws of Kenya:-

- a. The landlord/respondent is restrained by an order of injunction, by itself, agents, servants, employees or any other person acting on its behalf or direction from unlawfully, illegally or arbitrarily evicting, damaging the tenant’s property or doing anything that affects the Applicant’s tenancy in Land Reference No.12715/244 without adhering to the provisions of the *landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, cap. 301, Laws of Kenya.
- b. The tenant’s complaint dated May 5, 2023 is hereby allowed and the landlord’s notice for termination of tenancy dated April 10, 2023 is declared invalid and is set aside.
- c. The tenant is awarded costs of Kshs.50,000/- against the landlord which shall be offset against the rent account.

it is so ordered.

**RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 2<sup>ND</sup> DAY OF NOVEMBER 2023.**

**HON.GAKUHI CHEGE**

**(PANEL CHAIRPERSON)**

.....

**HON. JOYCE OSODO**

**(MEMBER)**

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*Ruling delivered in the presence of:*

*Kiptoon for the Tenant/Applicant*

*No appearance for the Landlord*

