



**Kamau v Tene; Mucheke (Interested Party) (Tribunal Case
E145 of 2023) [2023] KEBPRT 250 (KLR) (Civ) (5 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 250 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E145 OF 2023
A MUMA, VICE CHAIR
MAY 5, 2023**

BETWEEN

LISPER WANJIKU KAMAU APPLICANT

AND

LESINGO OLE LEKIONDO TENE RESPONDENT

AND

HALIMA YUSSUF MUCHEKE INTERESTED PARTY

RULING

a. Parties and Representatives

1. The Applicant Lisper Wanjiku is the tenant and rented space on the suit property erected on Plot 19 Kitengela (hereinafter known as the ‘tenant’)
2. The 2nd Applicant Simon Rutto is also a tenant and rented space on the suit premises. (hereinafter the ‘tenant’)
3. The Applicant/Tenant appears in person in this matter.
4. The Respondent is the landlord and proprietor of the suit property and rented out space to the tenant. (hereinafter known as the ‘landlord’)
5. The firm of Moinket & Company Advocates represent the Landlord/Respondent in this matter.
6. The Interested Party is the current tenant in the suit property having entered into a tenancy agreement with the landlord on 17th January 2023.



b. The Dispute Background

7. The Tenant has filed a Reference and a Notice of Motion Application dated February 7, 2022 under section 12 (4) of the [Landlords and Tenants \(Shops, Hotels and Catering\) Establishments Act](#) Cap 301 seeking orders that the landlord be compelled to re-open the premises failure to which the tenant be granted break in orders as well as that the landlord be compelled to surrender his details to Kenya Power Lighting Company to enable them provide a new meter and restore power supply to the premises.
8. The matter came up for hearing before the Tribunal on February 9, 2023 during which the Tribunal gave orders requiring that the Landlord re-open the suit premises for the tenant and in default the tenant be at liberty to break in.
9. The Landlord thereafter also filed an Application dated February 22, 2023 wherein they sought to have the orders issued by the Tribunal on February 9, 2023 vacated as well as that the Tribunal pay the rental arrears owed to them.
10. The interested party also filed an application dated February 22, 2023 also seeking to have the orders issued by the Tribunal on February 9, 2023 stayed pending the determination of the matter by virtue of the fact that they were the new tenants in the premises.

c. The Tenant's Claim

11. The Tenant has filed a Reference and a Notice of Motion Application dated February 7, 2023 seeking that the landlord be compelled to re-open the premises and surrender their details to KPLC to facilitate reconnection of electricity to the premises.

d. The Landlord/respondent's Claim

12. The Landlord/Respondent has filed an application dated February 22, 2023 seeking to set aside the orders of the Tribunal issued on February 9, 2023 requiring the landlord to re-open the premises.

e. The Interested Party's Claim

13. The Interested Party has filed an application dated February 22, 2023 seeking to set aside the orders of the Tribunal issued on February 9, 2023 requiring the landlord to re-open the premises

f. List of Issues for Determination

14. The issues raised for determination are as follows;
 - a. Whether the Tribunal has Jurisdiction to determine the matter?
 - b. Whether the Tenancy relationship between the parties was terminated?

g. Analysis and Findings

Whether the Tribunal has Jurisdiction to determine the matter?

15. Due to the veracity of the issues raised by all the parties herein, the Tribunal deemed it fit to have a site visit to determine the status of the premises prior to making a determination on the matter. The site visit was conducted on March 24, 2023 in the presence of all parties.



16. The main issues for determination in this matter regards the occupation of the premises. The tenant alleges that they are the rightful occupiers of the premises while the Landlord and the Interested Party are of a different opinion.
17. The landlord and the Interested Party claim that the relationship with the tenant was terminated and the premises are currently being occupied by Interested Party.
18. Having visited the premises, it was my observation that the bakery was indeed empty, however the tenant's goods were still at the site. Clearly, despite the tenant's goods not being inside the premises, the tenant had not vacated fully as his items were in a tent outside and a make shift kitchen also outside the main building.
19. The existence of the tenancy relationship then accords this Tribunal jurisdiction to pronounce itself on the issues arising from the same. Having established that this is the appropriate forum to dispense with the issues, I shall proceed to determine the subsequent issues raised.
20. The other question before this Tribunal is with regards to termination of the tenancy. The landlord has averred that the tenancy relationship was terminated and currently the premises is occupied by the Interested Party.
21. In their Supporting Affidavit to the application dated February 22, 2023, the landlord has annexed a letter dated April 4, 2022 in which they issued the tenant with a notice to pay the outstanding arrears within 5 days which at the time stood at Kshs 2,410,865.00 failure to which they would proceed to recover the amount without recourse to the tenant. The landlord stated that the notice to pay was issued pursuant to Clauses 10.1 and 10.2 of the tenancy agreement between the parties dated January 2, 2020.
22. They further stated that after receipt of the notice the parties reached an agreement where the tenant agreed to pay the arrears but the same was never done. It is as a result of this that the landlord issued the tenant with a letter dated April 8, 2022 wherein, they informed the tenant that the tenancy relationship stood terminated with immediate effect.
23. Termination of the tenancy falls under the ambit of the aforementioned interactions between the landlord and the tenant. The tenancy agreement between the parties provides as follows at Clause 11 with regards to Termination;

11.

- 1 The Lessee and the Landlord shall be entitled to terminate this Agreement on giving the other party six calendar months written notice of their intention to do so and at the expiration of such period of notice this agreement shall cease and determine.....provided Always That the landlord may terminate this Agreement with immediate effect if there is an existing breach or non-observance of any of the agreements provisions, conditions and stipulations on the part of the lessee.

24. Section 4(2) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) provides as follows:

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.



Section 4 (4) further provides that;

No notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party and shall be specified therein.....

25. A comparison of the above provision of CAP 301 and Clause 11 of the tenancy agreement shows that in relation to the notice period, the agreement does adhere to the requirements of the Act. Six months satisfies the minimum statutory period of two months stipulated under the Act.
26. Despite the foregoing I take note that the letter issued by the landlord terminating the tenancy did not adhere to the above-cited provisions. The letter stated that the relationship was terminated with immediate effect. I find that the same was not in accordance to CAP 301. The tenant was not accorded sufficient time to vacate the premises.
27. However, having stated the above I find it prudent to mention that I am aware that the main reason the landlord terminated the tenancy was due to the large sum of rent arrears accrued by the tenant. The court is convinced that the tenant was a habitual defaulter.
28. In light of the foregoing, the Tribunal acknowledges that indeed the relationship was not terminated as per the provisions of CAP 301 and as a result, the tenant would be entitled to damages. I however also find that since the tenant was in arrears, then any amount payable to her as damages might as well be used by the landlord to offset the huge arrears owed.
29. Additionally, since the Landlord has already proceeded to lease out the property to the interested party herein by virtue of the agreement dated January 17, 2023, I find that the only remedy available to the tenant would be for her to pick her tools of trade from the premises and hand over possession. This tribunal might not be in a position to determine the damages issue cause there was no business ongoing at the time of the visit between the landlord and tenant and her items were in a tent outside the actual restaurant which the Interested party was running.
30. In light of the foregoing, I therefore proceed to order as follows;

h. Orders

- a. The upshot is that the Tenant's Reference and Application dated February 7, 2023 are hereby dismissed in the following terms;
- b. The Applications dated February 22, 2022 by both the Landlord/Respondent and the Interested Party are upheld.
- c. The Tenant shall pick her items from the site if any on or before May 30, 2023 and thereafter hand over vacant possession of the premises to the Landlord.
- d. The tenant shall pay costs to the Landlord assessed at Kshs 20,000.00 within 30 days.
- e. The tenant shall pay costs to the Interested Party assessed at Kshs 40,000.00 within 30 days

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by Hon A. Muma this 5th day of May 2023 in the Absence of the Tenant in the presence of Wanjiku for the Landlord and in the presence of Kinyua for the Interested Party.



HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

