



Kibugi v Japheth Muthuka t/a Junior Shop & 3 others (Tribunal Case E483 of 2024) [2024] KEBPRT 1281 (KLR) (6 September 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1281 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E483 OF 2024
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
SEPTEMBER 6, 2024**

BETWEEN

JOHN KIBUGI APPLICANT

AND

JAPHETH MUTHUKA T/A JUNIOR SHOP 1ST RESPONDENT

**MERCY KAWIRA STANLEY T/A AMAN WINES AND
SPIRITS 2ND RESPONDENT**

MARY CHEVENE 3RD RESPONDENT

JAMES MUTUNGA T/A IMANI SPARES 4TH RESPONDENT

RULING

A. Dispute background

1. The landlord/applicant moved this Tribunal vide a Reference dated 12th April 2024 under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 with a complaint that the tenants were duly served with notices of termination of tenancy in the prescribed form on 31st January 2024, which were to take effect on 1st April 2024 but have not responded to the said notices or surrendered vacant possession of the suit premises.
2. The landlord/applicant simultaneously filed a notice of motion under a certificate of urgency dated 12th April 2024 in which he sought for the following orders; -
 - i. That the application be certified urgent.
 - ii. That the honorable tribunal be pleased to issue a mandatory injunction against the respondents to deliver vacant possession of the premises located in Eastleigh 1st Avenue on Juja Road pending hearing and determination of the application.



- iii. That the honorable tribunal be pleased to grant an order allowing the landlord to enter and repossess the suit premises with the assistance of the O.C.S Pangani Police Station.
 - iv. That the honorable tribunal be pleased to grant the landlord any other consequential relief it deems fit and just in the circumstances.
 - v. That costs be borne by the respondents.
3. The application is supported by the landlord's affidavit of even date in which he deposes as follows; -
- i. That the tenants herein were duly served with Notices to terminate tenancy in the prescribed form on 31st January 2024 which were to take effect on 1st April 2024 but have not responded to the said notices or surrendered vacant possession of the suit premises. A copy of the said notice and affidavit of service are annexed as "JK1".
 - ii. That the landlord wants to convert the suit premises for personal use since the respondents have refused to pay rent as and when it falls due for collection.
 - iii. That there is no reference filed by the respondents in opposition to the said notice.
 - iv. That the continued occupation by the respondents has occasioned the landlord loss and damages for reasons that it has precluded the landlord from earning rental income from the suit premises at the prevailing market rate.
4. The application was slated for hearing on 20th May 2024 when the tenants were granted leave to file and serve their respective replying affidavits to the application.
5. The tenants filed their replying affidavit dated 30th May 2024 in which they depose as follows; -
- i. That the tenants have been paying monthly rent dutifully and have never defaulted in rent payment. Copies or Mpesa Statements are annexed as "M.C.1".
 - ii. That the termination notices served upon the tenants are malicious with no sufficient grounds and that the tenants pray that the court grants them leave to file references dated 30th May 2024 out of time. Copies of the references are annexed as "M.C.2".
 - iii. That failure to file the said references in time was not intentional but due to lack of knowledge.
 - iv. That the tenants have invested heavily and established business goodwill and if evicted, they will incur immense loss and damages.
 - v. That the tenants have done repairs, renovations and improvements of the suit premises at estimated costs.
6. At a subsequent court hearing on 6th June 2024, the tenants sought to file an application to oppose the notice of termination of tenancy out of time. The court granted the tenants leave to file the said application.
7. The tenants then filed a notice of motion dated 20th June 2024 in which they sought for the following orders; -
- i. That the application be certified urgent.
 - ii. That the court be pleased to allow the tenants to oppose the legal termination notices dated 17th January 2024 out of time by filing references dated 30th May 2024 pending hearing and determination of the case.



- iii. That the landlord be restrained from evicting the tenant from the suit premises pending hearing and determination of the case.
 - iv. That the landlord be ordered to allow the tenant unlimited access to the suit premises pending hearing and determination of the case.
 - v. That the landlord be restrained from interfering with the tenants' quiet and peaceful occupation of the suit premises in any manner whatsoever pending hearing and determination of the case.
 - vi. That the O.C.S Pangani Police Station do assist in compliance with the orders.
 - vii. That costs of the application be provided for.
8. The application is supported by an affidavit of even date in which the 3rd respondent/tenant deposes as follows; -
- i. That due to financial constraints, the tenants did not manage to oppose the said notice to terminate tenancy by filing references.
 - ii. That due to the respondent's interference with the tenants' quiet occupation of the suit premises, the 3rd respondent stands to suffer in the hands of the landlord.
9. At a court hearing on 2nd July 2024, the landlord stated that the tenants had rent arrears of which the tenants denied with some saying that they had only arrears of one month which they intended to pay on the same day. The court directed that the matter be canvassed by way of written submissions and the landlord was granted leave to respond to the application dated 20th June 2024 and the tenants were granted leave to file their further affidavit.
10. The tenants filed their further affidavit dated 17th July 2024 in which they reiterated the statements in their replying affidavit dated 30th May 2024 and annexed copies of Mpesa statements to prove rent payment.
11. Only the tenants complied by filing their written submissions dated 17th July 2024 which we shall consider as we deal with the issues for determination.

B. Issues for determination

12. The following are the issues for determination; -
- a. Whether the application dated 20th June 2024 is merited.
 - b. Who shall bear the costs of the application?

Issue (a) Whether the application dated 20th June 2024 is merited.

13. The tenants filed the application dated 20th June 2024 seeking leave to file a reference to oppose the notice to terminate tenancy issued to them by the landlord herein out of time as well as orders to restrain the landlord from interfering with their tenancy pending the hearing of the reference
14. The tenants in their affidavits have not denied that they were served with a notice to terminate tenancy dated on 31st January 2024 which was to take effect on 1st April 2024.



15. The tenants in their written submissions state that their application is merited as they have a genuine claim requiring the court's intervention. They also submit they have been paying their rent diligently and that the termination notices are malicious.
16. The tenants in their written submissions have directed the court to a decision in the case of [*Abmed Sirjat Noor v Hbm Power & Technology Ltd*](#) [2022] eKLR where Hon. Gakuhi Chege stated as follows; -
 16. Given the foregoing definition, I am satisfied that failure by the tenant to file a reference in the format prescribed under Cap.301 is not fatal and does not warrant me to exercise the draconian powers of striking out the pleadings. In any event, I am not told what prejudice the landlord will suffer if this Tribunal was to consider the pleadings filed herein as a reference or complaint contemplated under Cap. 301, Laws of Kenya.
 17. I am fortified in this holding by the decision in the case of *Essaji – vs- Solanki* (1968) EA 218 where it was held as follows: -

“The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from the pursuit of his rights”.
 18. This principle was restated in the case of *Trust Bank Ltd – vs- Amalo Company Ltd* (2002) eKLR where the court of appeal held that the principle which guides the court in the administration of justice when adjudicating on any dispute is that where possible disputes should be heard on their own merit”.
17. The tenants have further directed the court to the case of [*Nancy Njeri Gitau & another v James Muchone Njuga & another*](#) [2021] eKLR wherein Hon. Gakuhi Chege observed as follows; -
 - “46. In the premises, I find that the notice of termination of tenancy despite the fact that it took effect for failure to file a Reference as required was superseded by subsequent events of acceptance of rent and continued occupation of the suit premises by the tenants.”
18. We have perused the Mpesa statements filed by the tenants and we find that indeed the tenants have continued to pay rent to the landlord even after the expiry of the notices to terminate tenancy.
19. We also note that the landlord has not filed any response to the application by the tenants dated 20th June 2024 despite being granted leave to do so.
20. Based on the above analysis, the tribunal shall allow the tenants an opportunity to present their issues so as to enable the tribunal evaluate the substance of the case and thereafter rule on the dispute on merit.

Issue (b) Who shall bear the costs of the application?

21. 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 order the costs of the application to abide the outcome of the hearing.

C. Orders

22. In conclusion, the following orders commend to us; -
 - a. The application dated 20th June 2024 is hereby allowed.



- b. Costs of the application shall abide the hearing of the references filed by the tenants which are dated 30th May 2024.
- c. The application and the reference by the landlord dated 12th April 2024 shall be determined together with the tenants' references.
- d. Parties are granted 30 days hereof to comply with Order 11 of the [Civil Procedure Rules](#) by filing witnesses' statements and any other documents in support of their respective cases including rent account statements.
- e. Costs of the application shall abide the outcome of the hearing.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY of SEPTEMBER 2024.

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON. GAKUHI CHEGE

(PANEL MEMBER)

In the presence of:

Landlord present in person

All the respondents present in person

