



Nasombi & 5 others v Gumo; Sasia (Tenant) (Tribunal Case E032, 33, 34, 35, 36, 37 & E109 of 2023 (Consolidated)) [2023] KEBPRT 719 (KLR) (8 December 2023) (Ruling)

Neutral citation: [2023] KEBPRT 719 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E032, 33, 34, 35, 36, 37 & E109 OF 2023 (CONSOLIDATED)
A MUMA, MEMBER
DECEMBER 8, 2023

BETWEEN

PAMELA NASOMBI & 5 OTHERS SUB-TENANT

AND

MARGARET S. GUMO LANDLADY

AND

ALVIN SASIA TENANT

RULING

A. Parties and their Representatives

1. The Applicants, Alvin Sasia is the tenant in the suit premises. He rented the space on 1st June 2015. He further rented it out to the sub-tenants herein contained in paragraph 5.
2. The firm of Kiarie & Company Advocates represents the Applicant. (particulars withheld @yahoo.com)
3. The Respondent, Margaret S. Gumo is the Landlady and the owner of the suit premises.
4. The firm of Kounah & Company Advocates represents the Respondent. (particulars withheld.com)
5. Sub-tenants among others Pamela Nasombi are sub-tenants in the suit premises.

B. Background of the Dispute

6. On 17th February 2023, the Applicants filed several References which Gwere consolidated by the Honorable Tribunal in which they stated among others that their tenancy was controlled. Further, that the Landlady has a fixed term tenancy with one Alvin Sasia Interested Party which has been subsisting from 2015. In their claim, they stated that the Landlady has been threatening to evict the sub-tenants.



7. The Landlady filed a Replying Affidavit sworn on 3rd April 2023.
8. On 9th June 2023, the Applicant moved this Honourable Tribunal vide a Notice of Motion on even date. They sought among other Orders that the Tribunal be pleased to vary its Orders of 18/5/2023 to the effect that the Tenant be paying rent directly to the Landlady and that the Landlady be directed to furnish the Applicant with her Bank details for purpose of arranging for payment of rent. The applicant further sought to be joined in the proceedings as a party.
9. This Tribunal (Hon. A. Muma) vide its Order issued on 9th June 2023 directed that the matter be scheduled for hearing on 27th July 2023 and that parties be at liberty to respond.

C. Head Tenant's Case

10. That the head tenant, Alvin Sasia entered into a tenancy agreement of 5 years and 2 months with the Landlady on 1st June 2015.
11. That the head tenant has been paying rent of KShs. 77,000.00 per month to the Landlady from the year 2015 when they entered into a tenancy agreement.
12. That at the time he was leased the suit premises, it was vacant, thus he is the one who developed and/or constructed commercial buildings standing in the suit land.
13. The head tenant avers that he is the one who later sub-let the space to the sub-tenants herein. That the sub-tenants pay rent to him directly then he remits it to the Landlady by himself as the Tenant.

D. Landlady's Case

14. The Landlady deposed that she is the widow of the late Pius Magero Gumo and an administratrix of his estate. She is also one of the beneficial owners of the property known as LR No. 2116/IV/20 Situated in Kitale Town within Trans Nzoia County.
15. That she entered into a lease agreement with the tenant on 1st June 2015 and that upon expiry of the said lease agreement, the tenant neither renewed nor extended the lease agreement.
16. That through her advocates, on 12th October 2020 issued a notice to vacate to the tenant.

E. Jurisdiction.

17. This Tribunal is properly clothed with jurisdiction and the same has not be disputed by either party to these proceedings.

F. Issues for Determination

18. I have carefully perused all the pleadings and evidence presented before this honourable Court by the parties. It is therefore my respectful finding the two issues that fall for determination by this Tribunal are:
 - a. Whether there exists a controlled tenancy between the Landlady and the head Tenant, Alvin Sasia
 - b. Whether Alvin Sasia should be joined in the proceedings
 - c. Whether rent should be paid by sub-tenants directly to the Landlady



G. Analysis of Issues in view of the Law

a) Whether there exists a controlled tenancy between the Landlady and the Tenant, Alvin Sasia

19. Time without a number Courts have now grappled and dispensed with the question of existence of a controlled tenancy. In their pursuit of their determination and disposition, they have always sought the veneer of the Landlord and Tenant (Shops, Hotel and Catering Establishment) Act, Cap 301. Sections 2 & 4 of the said Act read together defines the meaning and gives the context of what now has been accepted as the meaning of a controlled tenancy. Section 2 provides:

A tenancy of a shop, hotel or catering establishment-

- b) Which has not been reduced into writing; or
- c) Which has been reduced into writing and which-
 - i. Is for a period not exceeding five years; or
 - ii. Contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
 - iii. Relates to premises of a class specified under subsection 2 of this section.

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;

20. In the case before me, what has not been disputed by both parties is that, they entered into a five years and 2 months' lease agreement. That the said lease agreement commenced on 1st June 2015 and expired sometimes in 2020 by way of effluxion of time.
21. I will not belabor in the first epoch of their relationship vide the said Lease Agreement, because it is prima facie out of the ambit of the controlled tenancy.
22. The issue of contention is whether there was a continued stay following expiry of the lease, and if any, the same amounts to a controlled tenancy.
23. What is also in the mind of this Tribunal is the letter seeking the head tenant to vacate dated 12th October 2020. This letter was sent by the Landlady through her advocates after expiry of the said Lease agreement.
24. I opine that by the head tenant claiming to have extended a stay in the premises that allegedly culminated into a controlled tenancy, he imposes himself a burden of proof which must without any doubt be discharged.
25. This Honourable Tribunal in the case of KCB Bank Kenya Limited v Lawrence Nguniko Simitu & another [2021] eKLR, while faced with similar facts cited with approval the case of provision of section 107 of Evidence Act. The Tribunal in its finding stated as follows:

“.... the court in *Re the Estate of Charles Ndegwa Kiragu alias Ndegwa Kiragu – (Deceased)* (2016) eKLR stated and affirmed to the provision of section 107 of the Evidence Act that,

“he who alleges must prove.”



Further, that in dispensing with a cause of proof, parties are expected to tender primary evidence which shall be the primary documents of payments or their certified copies. Paragraph 35

The proof for payment of the rent that shall suffice and be accepted by this Tribunal are documents or certified copies of the bank statements and or receipts evidencing such payment. The Applicant claims to have made payment for the extended stay in the premise relied on the bank statement attached on their notice of motion. The said statement document is dated 20th November 2020. The Respondents in response submits that the payment made on 20th October 2020 were for the period that subsisted the tenancy between the tenants and landlords.” Paragraph 36

26. It is also not disputed that the head Tenant after expiry of the tenancy neither extended nor renewed the lease agreement with the Landlady. I find that the only reason that the head Tenant further sub-let the suit premises to other tenants is not sufficient proof to show extension of a lease.
27. It will be an injury to justice to therefore find the head Tenant to be a controlled tenant when the circumstance is overtly not in tandem or consistent with the requirement of a controlled tenancy. Put differently, there exist no tenancy relationship between the Tenant and the Landlady. With this rendition therefore, I shall issue directions in the order section of this Ruling.

b) Whether Alvin Sasia should be joined in the proceedings

28. It is importance to mention that, the outcome of second and third issues for determination herein are heavily depended on the outcome of the first issue. I have already established above that there exists no controlled tenancy between the Tenant and the Landlady.
29. However, I find it prudent to just further justification of the dispensation of this issue (b) as follows.
30. It is trite law that a person seeking to be joined as a party to suit must show proof that they have real interest.
31. The law on joinder of parties to suits has been settled by the Supreme Court of Kenya in the case of Francis K. Muruatetu and another v. Republic & 5 others (2016) eKLR, the court set out identifiable key elements for consideration in an application for joinder as an Party. The elements are as follows: -
 - “a. The Personal interest or stake that the party has in the matter must be set out in the application. The Interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
 - b. The prejudice to be suffered by the intended Interested Party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.”
32. In the present case, it would be easier for the Alvin Sasia (seeking to joined as a party) to demonstrate real interest by just proving to be the tenant in the suit premises. Since this Tribunal in its respectful finding in the preceding issue has already found him not to be a tenant, then this fortification lapses by default.

c) Whether rent should be paid by sub-tenants directly to the Landlady

33. Who should receive rent?



34. The above question has disposition of this issue. It is no doubt in law that the person entitled to receive rent is the Landlady/Landlord or an agent to either of them who has been duly authorized.
35. It would still be kind for me to say, Alvin Sasia is a stranger now in the suit premises and even in the relationship between the subtenants and the Landlady.
36. It is only vide the authority of the landlady that the Alvin can be allowed to receive rent on her behalf. In lieu of such notice, then it will be rightfully so to say, he is trespassing the suit premises. Thus, the answer to the question is that the Landlady should receive rent as proceeds and/or enjoyment to what she owns.
37. At the delivery of the ruling another counsel appeared stating that they are a tenant as well and had filed No E 109/2023 and sought this courts direction.

H. Orders

38. In the upshot, both the Reference dated 17th February 2023 and Application dated 9th June 2023 are dismissed in the following terms:
- a. The tenant (Alvin Sasia) to remove his belongs (if any), vacate the premises and cease any dealings with the suit premises.
 - b. The landlady to provide bank details to the details to the sub-tenants for purpose of rent payment.
 - c. Sub-tenants to continue paying rent as and when it accrues to the Landlady, in default, Landlady shall be at liberty to distress.
 - d. All subtenants to enter into new leases with the landlady on or before the 1st of January 2023 in default they hand over their premises to the landlady.
 - e. This ruling to apply to E109/2023 with the exception as to December date of lease signing. Landlord to immediately reopen the tenants shop for business and Tenant to pay rent for December and January before the next hearing date and thereafter every subsequent month as agreed. Mention on 25/1/2023 for further directions on rent arrears. Tenant to provide proof of payments.
 - f. Each party to bear their own costs.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. MUMA THIS 8TH DAY OF DECEMBER 2023 IN PRESENCE OF KIARIE FOR THE TENANTS AND HEAD TENANTS/ THE APPLICANT AND AKINYI FOR THE LANDLORD/ RESPONDENTS AND OTIENO FOR THE TENANT IN E109/2023.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

