



**Maina v Karanja & another (Tribunal Case E719 of 2021)
[2023] KEBPRT 1326 (KLR) (2 August 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1326 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E719 OF 2021
CN MUGAMBI, CHAIR
AUGUST 2, 2023**

BETWEEN

ANN MAINA APPLICANT

AND

PETER KARANJA 1ST RESPONDENT

KARANJA SEVEN PROPERTIES LTD 2ND RESPONDENT

RULING

1. The tenant's complaint filed under section 12(4) of [Cap 301](#) is the one dated November 29, 2021. The complaint is to the effect that the respondents have issued the tenant with an illegal notice dated November 26, 2021 threatening to evict the tenant on November 30, 2021 contrary to the provisions of [Cap 301](#) of the Laws of Kenya. The tenant has prayed that the Tribunal intervenes and issue the necessary orders.
2. On December 14, 2021, the Tribunal, with the concurrence of the parties ordered that the suit premises be re-opened and the complaint/reference by the tenant be heard on February 22, 2023. Due to various intervening reasons, the reference was not heard until May 17, 2023, when the tenant testified. On the said day, the landlord did not attend court by himself, and Counsel as indeed he had not attended court on a myriad other occasions when the matter came up before court for one reason or another.

The Tenant's Evidence/Case

3. The Tenant testified that he operates his business at Karanja's Arcade, Nyamakima, and that the landlord wrote to the tenant and informed him that the Council required the tenant to leave the premises which was untrue, as it was the landlord who had issued to the tenant the notice dated November 26, 2011. The tenant produced the notice as the tenant's exhibit No. 1.



4. The tenant testified that the notice gave him only three days to vacate and indeed the landlord locked her business premises as a result of which she filed this suit and the Tribunal ordered that the suit premises be opened and which was done.
5. It is the tenant's testimony that on November 30, 2021, the landlord disconnected electricity and has despite several court orders, refused to reconnect the same as a result of which the tenant has not been able to carry out any business in the suit premises.
6. The tenant also testified that as at the time electricity was disconnected, she did not have any rent arrears.
7. The tenant prayed that the court orders the landlord to compensate her for loss of business at the rate of Kes 5,000/= per day from the date the electricity was disconnected. She also prayed for costs of the suit.

Analysis and determination

8. The issues that arise for determination in this complaint are in my view, the following:
 - a. Whether the notice to move shop amounts to a notice to terminate tenancy.
 - b. Whether the tenant is entitled to be compensated for loss of business at the rate of Kes 5,000/= per day and if so for how long?
 - c. What orders ought to be made in final disposition of this matter?

Issue A

9. The letter dated November 26, 2021 written by the Respondent to the tenant is in the following words.

RE: NOTICE TO MOVE SHOP:

We have been served with a notice by the City Inspectorate department to remove the semi permanent structures inside our building by November 30, 2021.

Kindly note the Inspectorate department has insisted on taking legal action if we fail to adhere.

We shall move your shop to ground floor under the same monthly rental terms of Kes 12,500/=.

Kindly prepare to move immediately.

Signed

Peter Karanja

10. To be fair to the landlord, I do not think that the above letter amounts to an illegal notice to terminate tenancy. I understand the landlord to be telling the tenant that due to the demands of the City Council, the structure the tenant occupies ought to be demolished with the rider that the tenant will be relocated to the ground floor on the same rental terms. I am of the view that the request by the landlord was reasonable in all circumstances and the tenant ought to have either taken the offered premises or negotiated for a suitable premises. The notice not amounting to a notice at all, I do not find any cause of action against the landlord in this case.
11. In the circumstances, I am unable to find that the landlord is liable to any alleged losses suffered by the tenant and I dismiss the claim for compensation.



12. Even if I had found that the tenant had a cause of action against the respondent, I would still have dismissed the tenant's claim for compensation for lack of proof and for being inconsistent with the tenant's complaint.
13. In finally disposing of the matter, I do not find any merits in the complaint filed by the tenant and the same is dismissed with no orders as to costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 2ND DAY OF AUGUST 2023

HON. CYPRIAN MUGAMBI

CHAIRPERSON

PARA 2.

8.2023

Ruling delivered in the absence of the parties.

BPRT CASE NO. E719 OF 2021 (NAIROBI) 2

