



**Kang'ethe & another v Adagalla (Tribunal Case E615 of 2022)  
[2023] KEBPRT 7 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 7 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E615 OF 2022  
A MUMA, VICE CHAIR  
JANUARY 19, 2023**

**BETWEEN**

**CHARLES GACHIE KANG'ETHE ..... 1<sup>ST</sup> LANDLORD**

**ESTHER NJERI GITHUA ..... 2<sup>ND</sup> LANDLORD**

**AND**

**COLLINS ADAGALLA ..... TENANT**

**RULING**

**A. Parties and Representatives**

1. The applicants Charles Gachie Kangethe and Esther Njeri are the landlords and had rented out space on the suit property known as Rongai Market in Limuru for the business. (hereinafter known as the 'landlord')
2. The landlord/applicant appears in person in this matter.
3. The respondent Collins Adagalla is the tenant and rented space for the business in the suit property. (hereinafter the 'tenant')
4. The respondent appears in person in this matter.

**B. The Dispute Background**

5. The landlord issued the tenant with a notice to terminate tenancy dated April 13, 2022 which was to take effect on July 1, 2022. The notice was issued on the grounds that the tenant had failed to comply with the terms of the tenancy and that the landlord wished to renovate the premises.
6. The tenant had initially failed to respond to the notice and as such the landlord filed a reference and a notice of motion application dated July 8, 2022 under section 12 (4) of the [Landlords and Tenants](#)



(Shops, Hotels and Catering) Establishments Act cap 301. The landlord was seeking that this honourable tribunal grants orders allowing them to take back possession of the premises.

### **C. The Landlord's Claim**

7. The landlord filed a reference and a notice of motion application dated July 8, 2022 to which they obtained orders granting the reference and the application on August 26, 2022.

### **D. The Tenant's Claim**

8. The tenant has filed a notice of motion application dated October 27, 2022 seeking to set aside the orders granted on August 26, 2022.

### **E. List of Issues for Determination**

9. It is the contention of this tribunal that the issues raised for determination are as follows;
  - I. Whether the termination notice issued by the landlord was valid?

### **F. Analysis and Findings**

#### **Whether the termination notice issued by the landlord was valid?**

10. Section 4(2,4) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act chapter 301 laws of Kenya provides that;
  - "4(2) 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.
  - 4(4) No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party
11. The above provision requires that before the landlord can terminate or alter the terms of a controlled tenancy, they must issue a notice of not less than two months to the tenant.
12. In the present case, the landlord issued the tenant with a notice to terminate tenancy dated April 13, 2022 and the same was to take effect on July 1, 2022. According to the provisions of cap 301 above, the said notice is deemed to be valid since it accorded the tenant the required two months period.
13. Section 4(5) of cap 301 requires that upon receipt of a notice the receiving party is expected to respond and inform the landlord of their intention of lack thereof to comply with the notice. The latter is done through filing of a reference before this tribunal to oppose the issued notice.
14. In this case, the tenant did not file a reference before this tribunal. It was not until the landlord was granted orders that they rushed to the tribunal and filed an application seeking to set aside the same orders and to be allowed to file a reference out of time. However the tenant has provided no valid reason for such an order of extension to be granted he does not dispute service neither does he give an explanation for his delay.
15. In such circumstances the tribunal is persuaded to find that the notice issued by the landlord still stands unopposed. Seeing as the same is valid, the contention of this tribunal is to uphold its validity and require that the tenant grant the landlord vacant possession of the premises.



#### **G. Orders**

- a. The upshot is that the landlord's reference and application dated July 8, 2022 is hereby allowed in the following terms;
- b. The tenant shall hand over vacant possession of the premises to the landlord on or before January 31, 2023 failure to which the landlord shall be at liberty to break in and take vacant possession.
- c. OCS Limuru Town Police Station to assist in compliance.
- d. Each party shall bear their own costs.

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 19TH DAY OF JANUARY 2023 IN THE PRESENCE OF ESTHER NJERI AND CHARLES GACHIE THE 1<sup>ST</sup> AND 2<sup>ND</sup> APPLICANTS IN PERSON AND COLLINS ADAGALLA THE TENANT IN PERSON.**

**HON A. MUMA**

**VICE CHAIR**

