



**Matu v Karuri (Tribunal Case E178 of 2021)**  
**[2024] KEBPRT 1742 (KLR) (6 December 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1742 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**TRIBUNAL CASE E178 OF 2021**  
**GAKUHI CHEGE, CHAIR & J OSODO, MEMBER**  
**DECEMBER 6, 2024**

**BETWEEN**

**ALICE WANJIKU MATU ..... TENANT**

**AND**

**NAOMI WAITHIRA KARURI ..... LANDLORD**

**JUDGMENT**

**A. Dispute Background**

1. The tenant/applicant moved this Tribunal vide a Reference dated 7<sup>th</sup> June 2021 under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301 in respect of her tenancy over a portion of Land Reference number 117/7418, situated at Kimbo, Ruiru, opposite GSU, Kiganjo Road, with a complaint that the landlord had been harassing her sub-tenants by threatening to levy distress for recovery of rent through Auctioneers, yet she had no landlord/tenant relationship with them.
2. The landlord is also accused of disconnecting electricity power installation to the demised premises yet the tenant bore all the costs of connection and was paying for consumption using pre-paid token system in her own name. The landlord was also accused of subjecting the tenant and the sub-tenants to unnecessary annoyance by blocking the access road and water supply to the demised premises with the sole purpose of forcing her and the sub-tenants to vacate the suit premises.
3. The landlord is further accused of demanding rent directly from the sub-tenants through threats and intimidation and of failure to complete the sanitation block and to provide a drainage system.
4. The tenant simultaneously filed a motion dated 11<sup>th</sup> June 2021 seeking for restraining orders against the landlord from inter-alia terminating her tenancy over the suit premises based on a notice to terminate the same dated 25<sup>th</sup> March 2021. The said notice was issued on the grounds that the tenant was in breach of clauses 3, 4, 18 and 23 of the lease agreement, failure to pay rent in time as stipulated in the



agreement from January 2021 to the date of issuance thereof and for encroaching on space not agreed upon without consent from the land owners. The notice was expressed to take effect on 1<sup>st</sup> June 2021.

5. It is worth noting that the parties entered into a lease agreement in respect of the suit premises on 15<sup>th</sup> July 2020 for a period of seven (7) years from 1<sup>st</sup> October 2020 until such a time when either party terminates it upon giving a written notice or upon the lapse of the stipulated time. The suit premises initially measured 180 feet by 54 feet or thereabouts which included two containers each measuring 40 feet and divided into five (5) stalls each, belonging to the landlord's daughter one Eva Karuri. The agreed monthly rent was Kenya shillings One hundred thousand (Kshs 100,000/=) payable on or before the 15<sup>th</sup> day of every month. Rent was to be reviewed yearly by the parties after the lapse of the first three years.
6. The tenant paid a sum of Kenya shillings Four hundred thousand (Kshs 400,000/=) being three months' advance rent with a sum of Kshs 100,000/= being treated as rent deposit. It was also agreed that all rent payments would be made to account number 01108155816400 in the name of Eva Karuri held at the Cooperative Bank.
7. The leased portion of land was intended for putting up temporary structures such as offices, container stalls, kiosks, nyama choma grills, charcoal burners, car wash, garage, entertainment structures, fun parks and butcheries.
8. The lessee was permitted to expand upwards and to put up storey structures additional container stalls and other temporary structures within the allowed limit by the County Government of Kiambu land and planning laws.
9. The tenant was permitted to paint, brand, landscape, publicize, advertise, plan, arrange, organize, improve, upgrade and beautify the premises in any way deemed appropriate by her.
10. Pursuant to the motion dated 11<sup>th</sup> June 2021, this Tribunal issued ex-parte injunctive orders against the landlord pending hearing inter-partes. On 12<sup>th</sup> July 2021, this Tribunal directed its Rent Inspector to visit the suit premises to confirm whether water supply had been disconnected or not. The visit was conducted and a report dated 17<sup>th</sup> August 2021 was filed which confirmed that there was no water at the suit premises although businesses were in operation apart from the car wash.
11. After hearing the application inter-partes, this Tribunal delivered its ruling on 14<sup>th</sup> September 2021 and made the following orders: -
  - i. The Landlord/Respondent either by herself, servants or agents be and are hereby restrained and prohibited from terminating the tenancy, interrupting, intimidating, harassing, closing down, levying distress for rent and evicting or in any manner whatsoever interfering with the quiet occupation and lawful enjoyment of the Tenant/applicant's tenancy on L.R. NO.7418/117 situated at Ruiru Kimbo area along Ruiru/Kiganjo pending hearing inter-partes of the complaint.
  - ii. The OCS Mugatha Police Station do ensure and oversee compliance of these orders and peace prevails.
  - iii. The Landlord's Agents is hereby ordered to issue rent receipts to the Tenant/applicant for all the previous payments for rent on the suit premises and render a true and just account for rent received since the commencement of the Tenancy.



- iv. The Landlord/Respondent is hereby ordered to reconnect electricity and water to the Tenant/applicant's premises forthwith and thereafter she is restrained from interfering with the same.
  - v. The Landlord/Respondent is hereby ordered to restore and/or reinstitute the original access road as it existed at the commencement of the tenancy herein in July, 2020.
  - vi. The Landlord/Respondent is hereby ordered to provide, install and construct a proper drainage system at the suit premises as it was mutually agreed at the commencement of the Tenancy.
  - vii. Pending compliance with the said orders and in view of non-compliance with the previous orders of 14<sup>th</sup> June 2021, I shall suspend payment of rent with effect from the date of the said order until full compliance.
  - viii. Costs of this application assessed at Kshs.25,000/- are awarded to the Tenant.”
12. On 19<sup>th</sup> October 2021, this Tribunal made further orders pursuant to an application dated 14<sup>th</sup> January 2022 allowing the tenant to reconnect water and electricity to the demised premises and restore and/or reinstate the access road and also construct proper drainage system to the same at her own cost and expense and recover such cost and expenses from further rent payable to the landlord until the same is fully recovered pending hearing inter-partes.
  13. On 19<sup>th</sup> August 2022, this Tribunal ordered resumption of rent payment with effect from 1<sup>st</sup> September 2022. The tenant subsequently filed an application dated 29<sup>th</sup> March 2023 in which she sought for orders that the landlord compensates her in the sum of Kshs 6,142,104/= being cost of improvements in renovation and construction of business premises known as L.R NO. 7418/117, Ruiru. In a ruling delivered on 11<sup>th</sup> July 2023, the said application was directed to be determined together with the main reference/complaint. Both parties were ordered to file and exchange witnesses’ statements and their list of documents. The tenant was directed to continue paying rent while both parties were ordered to file their rent account statements. Any accrued rent arrears were directed to be addressed together with the main reference/complaint. All other unresolved applications were to be addressed during the hearing of the reference/complaint.
  14. Both parties complied with the foregoing directions with the tenant filing witnesses’ statements dated 6<sup>th</sup> November 2023 by herself, Benson Maina and Justus Kitau and a list of documents of even date. On the other hand, the landlord filed witnesses’ statements dated 30<sup>th</sup> October 2023 by herself, Eva Karuri, Johnstone Mwai and QS Paul kamatu. She also filed a list of documents which includes the Quantity Surveyor’s report.
  15. The matter proceeded by way of viva voce evidence with all the witnesses adopting their filed statements as evidence in chief and thereafter being cross examined.
  16. After close of both parties’ cases, they filed their respective Counsel’s written submissions. The tenant’s submissions are dated 13<sup>th</sup> September 2024 while the landlord’s submissions are dated 15<sup>th</sup> September 2024.

## **B. Issues for determination**

17. The following issues arise for determination: -



- a. Whether the tenant is entitled to the reliefs sought in the reference/complaint and the application dated 29<sup>th</sup> March 2023.
- b. Whether the landlord's notice to terminate tenancy dated 25<sup>th</sup> March 2021 ought to be approved or dismissed.
- c. Who shall bear the costs of the case?

**Issue a) Whether the tenant is entitled to the reliefs sought in the reference/complaint and the application dated 29<sup>th</sup> March 2023.**

18. The tenant testified that in July 2020, she was looking for a place to do business when she came across the suit premises and upon introduction to the landlord, she expressed interest in the land. She was shown the land that was available for letting and Immediately paid her Kshs. 100,000/= to secure it. The tenant was shown the only access road to the suit property by the landlord which crossed through Safi Car Wash and as such, it was to be shared with the said car wash. After discussing her business plan, both parties toured the land and agreed on the area the tenant would lease. The tenant later visited the site with her husband before entering into the lease agreement.
19. As the area was very bushy, swampy, undeveloped and required deep excavation of swampy black cotton soil and refilling, it was agreed that the landlord would allow the tenant a grace period of 3 months to clear the area and prepare it for construction of the structures. They however agreed that the tenant would pay rent for October to December 2020 and 1 month's deposit in advance but the clearing of bushes would start immediately in July 2020 to the end of September 2020. The 3 months' grace period would also allow the landlord to construct the sanitation block, borehole and ensure there was proper drainage system to drain the flood waters and the drain waters from the envisaged car wash.
20. The following day, she was accompanied to the site by her husband, her sister and her daughter and the landlord also came with someone who was to establish the exact measurement of the land. After measuring the area, the tenant discovered that she required the frontal portion which she requested to be allowed to develop and put up structures. They marked off the area including the frontal portion and the landlord agreed to allow her to utilize this frontal portion for a grace period of 2 years without paying any rent for the portion to give her time to grow the business and the rent payable for the frontal portion would be agreed upon after expiry of two years.
21. The suit property was given when it was swampy, flooded, bushy virgin land that needed excavation, removal of the sticky black cotton soil and refill of the area. There was no existing electricity and water connection. It was agreed that she would connect electricity at her cost in the name of the landlord due to KPLC requirements. KPLC poles were erected and electricity was connected after the tenant acquired KPLC token meters, mounted the meter box and did wiring gradually. She also connected water to the business premises from a borehole the landlord provided at no cost and hoisted 2 water tanks for the car wash and other uses. The borehole is located at the landlord's homestead. The landlord agreed to install a drainage system for the entire premises considering the flood waters and was to complete construction of a sanitation block which was the reason she had requested for payment of 400,000/= in advance. These were all key requirements before any business could commence.
22. During her second visit, the tenant paid the sum of Kshs. 300,000/= (Kshs 100,000/= had been paid on the first visit) and it was agreed that they were to sign a lease for the measured area and that she would also be allowed to use the frontal extra portion for 2 years without paying any rent for it but



would formalize the agreement in respect of the extra portion later. According to the tenant, that was the main reason why Clause 26 in the signed Lease Agreement was included in the following terms –

' that the parties intend to make further addendums to this agreement in future to spell out the unspecified terms of this agreement'.

23. The landlord indicated that she would give the tenant a grace period of two (2) years to set up the business in the frontal extra portion and once the business was in operation, they could discuss the further rent after expiry of two years.
24. After agreeing and paying the deposit, the tenant went ahead and approached her bank and Sacco for loans with the sole intention of developing the suit premises. The bank gave her a loan of about Kshs. 2,000,000/= and she also took about Kshs.2,000,000/= from Harambee Sacco. She added the loan amount to her life savings and invested everything on the project.
25. In July-August 2020, she embarked on serious excavation of the deep and expansive swampy black cotton soil and clearing of indigenous bushes, backfilling with rock boulders, ballast; hardcore, flattening of the land with mechanical rollers and tractors and concreting the grounds etc. These works included the extra portion/frontal. During the process, the landlord was always present and she wanted to be in control of the entire process. The tenant also started construction of the car wash.
26. In September 2020, the tenant started having some business, the car wash was in operation and the stalls were painted and branded and they had started attracting clients.
27. In October 2020, when the business was in operation, the Landlord blocked the only access road to the business and this is when the dispute began since potential clients could not drive through to the car wash and the rental business shops that had started picking up.
28. Business dwindled completely in the very first month when the Contract/Lease was to take effect in October 2020. This forced the tenant to construct an alternative access road which was first paved as a pathway during the backfilling of the land when trucks bringing sand, ballast and building materials were passing through a rough patch pathway which she was forced to convert and construct into an alternative road.
29. After ensuring that there was full occupancy of the premises, the tenant sought to erect more structures in the frontal portion which was successful as the place was booked in advance. She continued with the construction, branding and painting of the area but the business continued to be low. At this juncture, apart from agreeing to lower rent for potential tenants from Kshs. 10,000/= to Kshs, 6,000/= per shop, the tenant also had a sitting with the landlord and agreed to include some clause in the lease to allow sub-tenants for wines and spirits businesses, which the landlord had initially resisted to include in the Lease. This was informed by the fact that potential sub-tenants were interested in putting up these businesses. The parties had not yet signed the Lease agreement until April 2021 when the Landlord finally agreed to include wines and spirits businesses.
30. Towards the end of April, 2021, after the Landlord finally agreed to include the wines and spirits businesses in the Lease and after signing the lease agreement, there were 10 sub-tenants for all the stalls in the main property and 8 tenants in the structures in the frontal extra portion. All the sub-tenants had fully paid and the car wash was also fully in operation.
31. It was at this juncture when the Landlord heightened her interference with the business. The Landlord's sons started harassing the sub-tenants. They would come to the suit premises with machetes and pangas. They disconnected electricity and water. The harassment and eviction of the tenants



- happened in respect of structures constructed on the extra frontal portion and the other structures covered in the lease agreement.
32. The landlord later went ahead to approach the few remaining sub-tenants and sought to enter into new tenancy agreements with them. On 19<sup>th</sup> May, 2021, the sub-tenants wrote a letter to the tenant indicating that they had been directed to pay rent directly to her landlord, which came as a shocker to her.
  33. During the time they were harassing the sub-tenants, the landlord with an aim to settle the matter amicably, directed the tenant's husband to go to the site with the former's son one Chege Karuri to measure the extra frontal portion and agree on the rent for the extra portion after expiry of two years grace period. The landlord's son was to later avail himself and he and the tenant's husband measured the frontal portion. Chege Karuri was to report back to the Landlord on the measurements of the frontal portion and thereafter they were to communicate on when to meet and agree on the rent for the frontal portion. They however never gave any feedback on the issue.
  34. The tenant avers that she entered into the suit premises with the full blessings of the Landlord. Sometimes in April 2021, the landlord wrote to the tenant stating 'that they needed to agree in writing on the rent and the grace period for the portion she was putting up structures. At some point, she wrote to the tenant indicating that she was willing to give a grace period of 2 months (May and June).
  35. On 27<sup>th</sup> May, 2021, both parties went for a mediation session in the presence of their lawyers from 10 a.m. to 7 p.m. when they conducted a siting. The landlord attended with her 2 sons and the tenant was accompanied by her husband, her son and daughter. It was agreed that the landlord and her sons would stop the harassment and they would reinstate water and electricity and the tenant would ensure any rent arrears is paid.
  36. However, on the same night, the landlord called the tenant's lawyers with clear instructions that the discussion for the date would not be honored and that the family had decided that she should vacate on or before 31<sup>st</sup> May, 2021. That was only 3 days after the said date.
  37. Following legal advice from her lawyers, the tenant approached court vide Milimani Commercial Court suit No. MCCC/E8711 OF 2021 which was later withdrawn for lack of jurisdiction whereupon the instant suit was filed.
  38. The tenant therefor prays for compensation in the total sum of Kshs. 6,142,104/= for the works the Tribunal ordered her to undertake after the Landlord failed to comply with its orders.
  39. According to the tenant, the containers do not have tenants following frustration of the business by the landlord and the butchery and restaurant had shut down. The car wash was also no longer operational.
  40. The sum of Kshs 6,142,104/= claimed are further costs suffered since the landlord did not honor the Tribunal order. These costs added to a business that had already been affected by the landlord's acts and inactions resulted into incapability of the tenant to pay rent hence the application for payment of the costs.
  41. The tenant gives the particulars of the loss as follows: -
    - a. Construction of alternate access road Kshs. 674,000/=
    - b. Installation of drainage Kshs. 2,721,600/=
    - c. Reinstatement of original access road Kshs. 494,000/=
    - d. Water reconnection Kshs. 51,600/=





- e. Electricity reconnection Kshs. 129,400/=
  - f. Securing submersible pump for Water and electricity after initial Vandalization Kshs. 700,000/=
  - g. Repainting and repair of damaged Nyama choma stalls Kshs. 71,200/=
  - h. Business marketing and branding Kshs. 130,904/=
  - i. Transport and fuel on follow up in the construction and reinstatement of the business premises to its initial state Kshs. 470,400/=
  - j. Costs ordered by the Tribunal Kshs. 25,000/=
- Total Kshs. 6,142,104/=
42. According to the tenant, the said amount includes loss of improvements in renovation and construction of business premises and does not include loss of rental and business income.
  43. It is the tenant's case that the landlord had a change of mind after she invested in the extra portion and it became appealing to her and other tenants. In her messages, the landlord stated that the grace period for the extra portion was terminated and required the tenant to vacate with immediate effect but never demanded for rent.
  44. It is therefore argued that it is absurd for the landlord to imply that the tenant is a trespasser from July, 2020 when she leased out the land to her and did not have a problem with her occupation of the entire land including the extra-portion, particularly when she was developing the said land and only raised an issue in March and April 2021, when the property was fully developed and had sub-tenants. The tenant therefore prays for award of damages in the sum of Kshs.6,142,104/=.
  45. It is the tenant's plea that this Tribunal should take into consideration the total loss of investment and business, the costs incurred in the initial reclaiming of the grounds through the initial excavation and backfilling of virgin land, which investments are irremovable as they are underground and the concrete covering the ground cannot be reclaimed, the money borrowed remained unpaid and the loans were un-serviced all of which had been invested in the business and would cause the tenant irreparable damage. She therefore seeks that the Tribunal invokes Clause 13 so as to allow her settle finances and get another tenant and/or person to take over and/or buy out her tenancy to mitigate further losses that might come with demolition and transportation of materials.
  46. In the event of failure to get such a tenant, she prays for sufficient time of 3 months, to allow her to remove and transport the structures at the cost of the Landlord.
  47. She states that in case she does not get a tenant to buy and take over the structures and the business, the costs of removing the erected structures will be impossible to bear and the Landlord ought to be ordered to pay additional costs for the removal and transportation of the structures, which has been occasioned by her interference leading to premature exit from the business. This is considering that the tenant will not get returns from the initial business investment, the ongoing investment and the costs incurred in the sum of Kshs 6,142,104/=.
  48. If she is to get another the tenant, it would lessen the loss for the initial costs of the excavation, installing electricity, water connections and levelling the ground, construction of alternative road which cannot be removed.



49. She urges this Tribunal to take cognizance of the fact that the Lease period is seven (7) years and exiting now will mean loss of 4 years out of the contract period, considering that 3 years have already been wasted in disputes and court battles. She prays that the honorable court prevails upon the Landlord to pay the total costs of 6,142,104/=, failure to which she continues occupying the business premises and revive her business until the sum of Kshs 6,142,104/= is fully paid and/or until the expiry of the Lease Agreement.
50. If allowed to continue occupying the suit premises, she prays for an order that the Landlord grants her peaceful occupation of the suit premises allows her do business as required by Law as per the lease agreement between them.
51. The tenant also called one Justus Mutia Kitau who is a Certified Public Accountant as a witness. The said witness produced a report dated 23<sup>rd</sup> September 2022 as the tenant's exhibit 14. Although an issue was being raised about his professional qualifications, we are satisfied with his explanation about it especially given that there was no notice given by the defence to produce his certificates. His demeanor when he testified was not questionable and we have no reason to doubt his qualifications. He clearly explained the basis of his report and we are satisfied that it meets a professional expert's report.
52. The tenant also called her husband one Benson Maina Njoroge who adopted his filed witness statement as his evidence and was duly cross examined. His evidence was similar to that of the tenant and we need not rehash it in this judgement.
53. On the other hand, the landlord through her witness statement which was adopted in evidence stated that she entered into the lease agreement with the tenant in July 2020 for a section of the open field measuring 180ft X 54 ft on L.R 7418/117, Ruiru Kimbo.
54. However, the landlord-tenant relationship has completely deteriorated as the tenant has refused to meet her rental obligations despite court orders on rent resumption. In all, the only rent received from the tenant for the entire time of her tenancy is a total sum of Kshs 660,000/=.
55. According to the landlord, whenever she asks the tenant for rent, she has always declined and used court proceedings to ensure that she does not use any lawful means to recover the same. As a result, the tenant was in rent arrears of Kshs 2,000,000/= being 20 months' rent as at 30<sup>th</sup> October 2023, barring the period when the same was under lawful suspension in the instant proceedings. The question as to whether she should pay the rent for the suspension period of 12 months i.e Kshs. 1,200,000/= is yet to be determined by this honorable court.
56. The landlord states that the tenant has without consultation, permission or authority from her made several alterations and establishments in the premises against the terms of the lease agreement. For example, she has constructed a pit latrine in the area without permission.
57. In recent times, the tenant has sought for compensation of Kshs 6,142,104/= in false and exaggerated costs which manifests dishonesty and greed. This in the landlord's view was a venture to grab her land by force and she has been busy constructing a water well, a car wash and eateries covering spaces well beyond the leased area.
58. The landlord sought to rely on all her previous affidavits and exhibits filed before this Tribunal. She sought for extinguishment of the landlord-tenant relationship herein and an order for recovery of the rent balance from the tenant.
59. She called her daughter one Naomi W. Karuri as a witness in this case. The said witness adopted her filed witness statement. It was her evidence that she was the user of the open field leased to the tenant





where she owned and maintained two (2) of the 40 x 8 feet container structures that had been in the open field prior to the lease.

60. The tenant entered the suit premises in July 2020 and was given a three (3) months' grace period to set up the place for her business. This included modifying the landscape of the area, setting up her desired structures, including a car wash facility within the leased area.
61. The lease took effect in October 2020. The tenant was prompt to pay 3 months' rent in the sum of Kshs 300,000/= to cover the months of October, November and December 2020. She had also paid Kshs.100,000 as deposit making a total of Kshs 400,000/=. This was the money used by the landlord to finish up an ablution block which was under construction to serve her nearby family home as well as the new tenant.
62. The lease of the part measuring 180ft x 54 ft was taken on "AS IS WHERE IS" basis. The tenant signed the lease after all the parties agreed. The major clause that she wanted taken out was a clause prohibiting the sale of Liquor within the leased area due to conflicting religious beliefs of the landlord and upon good negotiations, this was settled and the tenant took the lease after the clause was taken out.
63. At the time, the tenant argued that if she was allowed to sell liquor within the facility, she would manage to honor her obligations in the agreement more conveniently. The clause was the only provision in dispute in the original drafts of the lease agreement. All other demands have come about to justify her non-payment of rent.
64. Once she took possession of the land, the tenant kept changing goal posts on what she had wanted of the area and suddenly made new demands to the landlord leading to the disputes which led to the pertinent rent suspension order by the Tribunal that was issued after the relationship of the parties deteriorated and the dispute filed in court.
65. Unfortunately, the landlord was taken ill and hospitalized and due to her incapacitation was unable to respond to the orders or even to communicate with her lawyer during the time. She was bedridden and then moved on to being a wheelchair user. She later regained her mobility a year later in August 2022.
66. Due to failure of rent payments from January 2021, the landlord sought legal reprieve to get the tenant to pay her dues and that is when the tenant came up gun blazing with all sorts of demands. Indeed, in the subsequent disputes, the Tribunal directed visits by its Rent Inspector(s) to the premises and their reports ought to be considered in determining the value and responsible persons for the costs of meeting the Tribunal's directions on the improvements the tenant demanded on the lease area.
67. In the period of the lease, the tenant refused to pay her monthly rent even when the court directed for rent resumption and further encroached the non-leased area (retained area) that in the first place she had been licensed/permitted to use as a parking lot for a period of 2 years, a time frame which passed in October 2022
68. Sadly, she still occupies the area and continues to develop the area and demand compensation for several things she has been erecting in the encroached area well outside the instant dispute.
69. The landlord has tried to reach an understanding with the tenant, she has defied her and gone ahead to overran/develop/abuse the landscape of the encroached area, including setting up permanent structures which were not even allowed within the leased area. Anytime the tenant is asked for rent payment, she reports it to the court as harassment. No written agreement exists for her occupation of the non-leased area/no terms of stay/ no rent determined and indeed, her occupation is without the consent of the land owner.



70. The tenant is accused of shamelessly including costs of some of the illegal designs and structures including putting up a new car wash within a non-leased portion at the cost of Kshs 6.3 million which she now demands in the instant matter.
71. Despite the suspension of rent payments in August 2022, the tenant only paid rent for September 2022 & October 2022. As such, the Landlord is not liable for any construction or development made on the non-leased area of the property, or indeed, expenses incurred to run her businesses.
72. The lease agreement clearly stated that the tenant was to do the landscaping which included any works in the drainages. As far as the witness is concerned, the so-called costs of the tenant of Kshs 6.3 million claimed from her mother is falsified as explained below: -
- a. Construction of alternate road at Kshs 674,000/=: The road access was granted which is actually in use by both the landlord and tenant.
  - b. Reinstatement of original access road at Kshs 494,000/=: The access road was granted and is currently in use by both the landlord and tenant. The tenant never incurred any cost of making access to the business premises because there was an already pre-existing access which is what is currently in use.
  - c. Installation of drainage at Kshs 2,721,600/=: This includes construction of permanent soak pits in the non-leased area. Moving the car wash from the leased area to the non-leased area makes the matter entirely of no lawful relevance before this Tribunal. Further, the agreement clearly stated the tenant was to improve landscaping which also includes drainage, if she so desired. The so-called soak pit is a water well which she is now using which is about 8 feet deep and 4 ft square.
  - d. Electricity reconnection at Kshs 129,400/=: The service provider would have been a better arbiter on the issue and without evidence, the landlord can do no further.
  - e. Securing submersible pump for water and electricity after initial vandalization at Kshs 700,000/=: The Tenant submitted bloated costs thereto but in any event the issue can be followed up with her security personnel who should have been responsible for securing the installations. The landlord freely gave the tenant water for use in her ventures through a borehole sunk in the area for her family use.
  - f. Repainting and repair of nyama choma stalls at Kshs 71,200/-: These stalls are constructed outside the leased area.
  - g. Transport and fuel at Kshs 470,000/=: This is a personal business cost which ought to be borne by the tenant.
73. The landlord also called one Paul Muchoki Kimatu, a professional Quantity Surveyor who presented a report dated 27<sup>th</sup> October 2023 by Built Sync Consult showing that the improvements done by the tenant were valued at Kshs 425,375/=. The report relates to improvements of the parking and drainage. It does not cover the car wash shed, mabati storage sheds and steel framed shop sheds which are done outside the precincts of the leased area.
74. The witness confirmed in cross-examination that the access road was also not included as it was not within the leased area. He clarified that mention of the access road in the report refers to the parking area. He confirmed that he only considered the drainage within the leased area which was approximately 180 feet in length. The issue of electricity and water piping from the borehole was also not included in the report. The submersible pump was not included.



75. Having reviewed the evidence tendered by both parties their respective Counsels' submissions, it is clear that the landlord failed to do certain things that had been agreed upon under the lease agreement and those directed through various court orders issued in this matter. The tenant was forced to undertake the said exercise with a rider that the costs incurred pursuant thereto were to be offset against the rent account.
76. As noted in this judgement, on 19<sup>th</sup> October 2021, this Tribunal made further orders pursuant to an application dated 14<sup>th</sup> January 2022 allowing the tenant to reconnect water and electricity to the demised premises and restore and/or reinstate the access road and construct proper drainage system to the same at her own cost and expense and recover such costs and expenses from further rent payable to the landlord until the same is fully recovered pending hearing inter-partes.
77. According to the tenant, the said exercise cost her a sum of Kshs 6,142,104/= whose breakdown has been reproduced in the foregoing paragraphs of this judgement. According to the landlord, the Tribunal's directions leading to the tenant's developments for which she seeks compensation relates to orders of 24<sup>th</sup> September 2021 as well as 19<sup>th</sup> October 2021. In the orders, the tenant was allowed to construct drainage and restitute an access road to her premises and recover such costs and expenses from further rent payable to the landlord.
78. The tenant claims to have spent in excess of Kshs 6,142,104/= to improve the suit premises in furtherance of the Tribunal orders and now seek for compensation of the said amount. For the record, this is almost the rent payable to the landlord for the entire period of the tenancy.
79. The landlord opposes the claim on the following grounds: -
- a. The tenant misinterpreted the court order and treacherously embarked on an open cheque expenditure, whether true or false, in areas of which neither the court ordered nor the landlord had control over. The tenant's notice of motion dated 29<sup>th</sup> March 2023 for compensation actually addressed itself to loss of improvements in renovation and construction on the suit land.
  - b. Several aspects of the so-called developments by the tenant are outside the leased area.
  - c. The tenant's valuation report by Mariara, Kigotho and Associates is overly exaggerated and unreliable. It was prepared by an unqualified person (not registered with the professional body), tenant Witness No.1; a complete champerty as the person prepared the report without a professional fee in expectation of a recompense if the claim succeeds. It wasn't clear if at all he had a Terms of Reference or instructions to do the work. Moreover, he was an accountant, not an estate valuer. The copies of receipts backing the expenditures showed outright exaggerations and could neither be authenticated. Indeed, the receipts are permissively dated, spreading from 2<sup>nd</sup> October 2021(from Lalji contractors) till 30<sup>th</sup> December 2022 (from Kenya software Providers Ltd), a period of about one year, without any basis.
  - d. In cross examination, the tenant conceded that she had also been constructing other houses during the period in question, and it cannot be any clear what building materials were purchased (if any) for which project. At any rate, the landlord presented a Registered Valuer, QS Paul Kamatu of Built Sync Consult (PSQSF/1423/23-24) who presented a professional report estimating the cost of the improvements on the parking and the drainage in the demised premises to be Kshs 425,375/= only.
80. The landlord submits that some of the claims, namely the reconnection of electricity and water, had nothing to do with her. For one, the claims are inaccurate since electricity reconnection in the country



- are statutorily the work of the Kenya Power and Lighting Company-KPLC which receipts them. The same was not evinced in the tenant's case. Secondly, the landlord maintained that she provided free water access to the tenant from a common borehole at the edge of the leased property. It is the tenant who was to make the reticulation of the water as she wished. Furthermore, there was no police reports/ investigations linking the landlord with the alleged disconnections of water and electricity supply in the premises. The landlord strongly asked the Tribunal to find that the reported claims are false.
81. Regarding the restoration of the original road access as well as the drainage in the lease area, the testimony of the Landlord was that the tenant took occupation of the land after inspecting and liking it. That the tenant/lessee could 'paint, brand, landscape.... improve, upgrade and beautify the premise in any way deemed appropriate by the lessee'. The landlord submits that any improvements on the land drainage or the mounting of hardcore on parts of the land, whether for the car washing bay or road of access was to be at the cost of the tenant. In other words, it would not have been the responsibility of the landlord to design or make the premises attractive for the business of the tenant.
  82. Another point raised is that some of the acts required by the Tribunal such as restitution of the access road would have been subject to prior interests of pre-existing tenants and the landlord granted an alternative road to the tenant if she would need it after laying down her car wash business. Moreover, making out another road of access could have necessitated compliance with By-laws and planning Rules of the County Government of Kiambu. The Landlord as such is completely innocent on satisfying some of the make-overs that the tenant herself engaged in to brand or position her businesses. Sadly, the tenant's submissions include the same claims for CCTV installations, brandings and paint works. Such claims would not warrant inclusion for performance based on any of the Tribunal's directions.
  83. Finally, the position of the landlord is that the tenant in reaching the lease agreement found the premises rentable. There was a determinate term of the lease, rent payable and other secondary expenses or implied terms to the agreement. In the event that she didn't like it, she had an option to exit or terminate the lease before the end of the period. But she went on, if correct, to design new developments to market the premises well outside the orders of the Tribunal. In her submissions, she equates the costs to damages. Damages are awarded by a judicial body, not the claimant himself/herself. To consider any compensation to her for the absurd adventure would be to satisfy her pursuit of unjust enrichment.
  84. The landlord submits that she believes that the tenant's suit against her has been marked by bad faith, endless stream of lies and falsehoods in the urge to defeat justice and abuse of due process. It is therefore argued that in addition to the provisions of the law, the exculpating reasons put forward in some of the responses of the landlord to the tenant's motions are considered by the Tribunal in arriving at its determination. The landlord pleads with the Tribunal to uphold the termination notice dated 25<sup>th</sup> March 2021 as well as the notice of vacation issued to the tenant, and that all the claims of the tenant be dismissed with costs.
  85. On the other hand, the tenant submits that the Honorable Tribunal, vide its order issued on the 19<sup>th</sup> October, 2021, allowed her to reconnect the water and electricity to the demised property and restore and/or reinstate the access road and construct proper drainage at the tenant's own cost and expenses and recover such costs from further rent payable to the landlord until the same is fully recovered.
  86. Vide an application dated 29<sup>th</sup> March, 2023, the tenant, using receipts sought compensation for the reconnection of water, electricity and reinstatement of the access road among other things as tabulated in her supporting affidavit which amounted to Kshs. 6,142,104/=. The landlord was given ample time to comply with the Tribunal's order of 14<sup>th</sup> September, 2021 but refused, neglected and or ignored to do so and cannot therefore claim rent arrears when she was the master of her own problems.



87. The lease agreement provides that the lessee is permitted to expand upwards and put up storey structures such as additional container stalls and other temporary structures within the allowed limit by the County Government of Kiambu land and planning Laws. It further provides that the lessee shall not undertake to do anything on the leased parcel of land, which will be injurious and or will interfere with the landscape.
88. The tenant took over the demised premises and the frontal area, the entire parcel of land was swampy, bushy and uneven with clay soil clogging the drainage of rain water into the soil. It is not contested by the landlord that she granted the tenant 3 months' grace period to service the landscape which included excavation and backfilling of soil. All along, the landlord was not opposed to the same and even signed the same lease agreement relied upon after all the landscaping was done.
89. The lease agreement allowed the tenant to make changes to the landscape to meet her satisfaction. Additionally, the witness statement of EVA KARURI at paragraph 2 states: -
- “That the tenant entered the premises in July 2020 and was given a three month grace period to set up her place for business. This included modifying the landscape of the area, setting up her desired structures, including a car wash facility within the leased area.”
90. According to the tenant, a car wash in itself is a semi-permanent structure comprising of cement floor which is permanent and iron framing. It was with the blessing of the landlord which is admitted by her for the tenant to construct the said structures including the drainage systems. The access road was constructed out of non-compliance with this Honorable Court's orders by the landlord. It is the tenant's submission that the landlord cannot blow hot and cold at the same time. She cannot create a problem, fail to remedy it and then seek to benefit from it. Such tactics are best left to politicians.
91. Having analyzed the evidence and submissions of both parties, we agree with the tenant that the improvements effected on the suit premises were done pursuant to the lease agreement and subsequent orders of this Tribunal. The same cannot therefore be said to be illegal.
92. Although the landlord submits that the occupation of the frontal section of the suit property was declared illegal in another matter, no such evidence was presented during the hearing of the instant case. Such evidence cannot be admitted through submissions in line with the decision in DANIEL TOROITICH ARAP MOI VS MWANGI STEPHEN MURIITHI & ANOTHER (2014) eKLR wherein the Court of Appeal had the following to state on page 12/13: -

“We have already found that the 1st respondent failed to discharge his burden of proof of the existence of facts claimed of the companies, what they owned and whether property sales indeed took place, followed by transfers. So, what we conclude is that the learned trial judge simply lifted the figure of sh.80,161,720/= from the 1st respondent's submissions and awarded it against the appellant. This was wholly in error. Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties' “marketing language”, each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented. In any event all the 1st respondent would claim and prove as loss could only relate to the shares in the companies and not the properties of the companies. And even that he did not do.” (Emphasis ours)



93. We have noted that the landlord claims to have allowed the tenant to only use the frontal section of the suit premises for parking purposes but claims that the tenant went ahead to put up permanent developments thereon. The landlord's Quantity Surveyor testified that he did not consider the improvements effected by the tenant on the frontal section of the suit premises.
94. On the other hand, the tenant stated that she was allowed to establish a drainage system, make an alternative access road, reconnect water and electricity to the suit premises. These kind of activities in our view could not be confined within the precincts of the suit premises and we therefore find that the expenses incurred in that regard are legal.
95. Section 12(1)(L) of Cap 301, Laws of Kenya provides one of the Tribunal powers as follows: -
- “to award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill and in improvements carried out by the tenant with the landlord's consent.”
96. This Tribunal therefore has jurisdiction to award the compensation sought by the tenant in this case more so given the backing of the orders made before the improvements were effected.
97. As regards quantum of the costs of the improvements, we find and hold that the tenant's documents and evidence were more convincing than those of the landlord. The landlord did not object to the production of the documents and we have no reason to doubt that the amounts were incurred. We shall therefore proceed to grant the same.
98. Pursuant to this Tribunal's orders of 19<sup>th</sup> October 2021, the amounts expended by the tenant were to be recovered from future rent payable to the landlord until the same were fully settled. The said order having not been set aside shall continue to apply.
99. In regard to the period of suspension of rent between 14<sup>th</sup> June 2021 and 1<sup>st</sup> September 2022, this Tribunal finds and holds that the tenant is not liable to pay the same on the basis that the said suspension order was made on account of the landlord's non-compliance with court orders. Ordering payment of the rent to the landlord would amount to rewarding a contemnor which no court of law ought to countenance. Consequently, the rent payable for the said period is hereby waived.
100. Any rent which has accrued and/or which continues to accrue thereafter in respect of the suit premises shall be defrayed against the compensation award granted to the tenant until the same is fully settled. However, should the compensation award not be fully paid by the date of expiry of the lease, any balance thereof shall be recovered against the landlord as a civil debt by way of execution under Section 14(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301, Laws of Kenya.

**Issue (b) Whether the landlord's notice to terminate tenancy dated 25<sup>th</sup> March 2021 ought to be approved or dismissed.**

101. Section 4(2), Cap 301, provides as follows: -
- “(2) 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.”





102. Section 7(1) of the Act provides for the grounds upon which a landlord can terminate a tenancy. One of grounds for termination of tenancy under subsection (b) is where a tenant has defaulted in paying rent for two months after such rent has become due and payable or has persistently delayed in paying rent which has become due and payable.
103. Section 6(1) of the said statute provides: -
- “(1) A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal.’
104. Section 9(1) of the said statute provides: -
- “(1) Upon a reference a Tribunal may, after such inquiry as may be required by or under this Act, or as it deems necessary—
- (a) approve the terms of the tenancy notice concerned, either in its entirety or subject to such amendment or alteration as the Tribunal thinks just having regard to all the circumstances of the case; or
- (b) order that the tenancy notice shall be of no effect;
- (c) and in either case make such further or other order as it thinks appropriate.”
105. We have looked at the tenancy notice issued by the landlord and find that the same conforms with Section 4(2) of Cap 301 as it is in the prescribed form.
106. The landlord pleads that by the time of issuing the termination notice, the tenant was in arrears of Kshs 540,000/= as at 1<sup>st</sup> June 2021 when the same was issued. On the other hand, the tenant pleads that she did not owe the landlord any rent arrears. The landlord did not indicate the period for which the alleged arrears were owing. It is to be noted that no rent account statement was filed by the landlord. Consequently, we are unable to terminate the tenancy on the said ground.
107. The second ground proffered in the tenancy notice is that the tenant was guilty of breach of clause 3, 4, 18 and 23 of the agreement. No evidence of the alleged breaches was tendered by the landlord at the hearing of the case and the Tribunal was left to make assumptions on the same.
108. The final ground for termination was that the tenant was guilty of encroaching on space not agreed upon and without written consent from the land owners. It was however the tenant’s position that the landlord allowed her to use the said portion and to erect the structures complained of pending a formal agreement on the rent payable and that both parties had exchanged various correspondences through SMS and physical meetings in that regard. The landlord cannot therefore turn around and use the said ground to terminate her tenancy. We have seen the messages and wholly agree with the tenant that there were indeed ongoing negotiations in respect of the additional space and the constructions erected thereon cannot be a basis for termination of the tenancy.



109. In the premises, we find and hold that the landlord has failed to prove the tenancy notice on a balance of probabilities and we disapprove the same.

**Issue (c) Who shall bear the costs of case?**

110. Pursuant to Section 12(1)(k) of Cap 301, costs of every action before this Tribunal are in our discretion but always follow the event unless for good reasons otherwise ordered. We have no reason to deny costs to the tenant being the successful party.

**CONCLUSION**

111. In view of the foregoing analysis, the final orders which commend to us are: -
- a. The tenant's reference dated 5<sup>th</sup> September 2023 and application dated 29<sup>th</sup> March 2023 are allowed.
  - b. The landlord is restrained from evicting the tenant or her sub-tenants from the suit premises situate on L.R No. 7418/117, RUIRU KIMBO or in any other manner interfering with her use and enjoyment thereof until the lease agreement dated 15<sup>th</sup> July 2020 expires.
  - c. That the OCS, MUGUTHA POLICE STATION shall ensure compliance with the foregoing orders.
  - d. The tenant is awarded compensation in the sum of Kshs 6,142,104/= in respect of the developments effected pursuant to the lease agreement and court orders on the suit premises which amount shall be defrayed against the accrued and/or accruing rent until the same is fully settled.
  - e. Should the compensation award not be fully paid by the date of expiry of the lease, any balance thereof shall be recovered against the landlord as a civil debt by way of execution under Section 14(1) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301, Laws of Kenya.
  - f. Should the amount be cleared before expiry of the lease, the tenant shall automatically resume rent payment at the rate agreed upon in the lease agreement dated 15<sup>th</sup> July 2020
  - g. For avoidance of doubt, the tenant shall not be liable to pay rent for the suspension period between 14<sup>th</sup> June 2021 and 1<sup>st</sup> September 2022, since the said suspension order was made on account of the landlord's non-compliance with court orders.
  - h. Costs of the suit to be assessed by the Deputy Registrar of this Tribunal are awarded to the tenant.

It is so ordered.

**Judgement**

1. The landlord herein issued the tenant with a notice to terminate tenancy dated 14<sup>th</sup> March 2024 which was due to take effect on 15<sup>th</sup> May 2024.
2. The tenant in his replying affidavit dated 14<sup>th</sup> June 2024 deposes that the said notice is illegal because the tenant was to vacate the premises after the lapse of 1 month which he states to be the 15<sup>th</sup> May 2024.



3. In the case of Manaver N Alibhai t/a Diani Boutique – vs- South Coast Fitness & Sports Centre Limited Civil Appeal No. 203 of 1994 it was held as follows: -

“The Act lays down clearly in detail, the procedure for the termination of a controlled tenancy. Section 4(1) of the Act states in very clear language that a controlled tenancy shall not terminate or be terminated and no term or condition in or right or service enjoyed by the tenant of any such tenancy shall be altered otherwise than in accordance with specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the tenant. The notice must also specify the ground upon which termination is sought. The prescribed notice in form A also requires the landlord to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice.”

4. We have perused the notice to terminate tenancy subject matter herein and note that the same is dated 14<sup>th</sup> March 2024 and was expressed to take effect on 15<sup>th</sup> May 2024, which constitutes a period 2 months as required by Cap 301 Laws of Kenya. In addition, we find that the notice is in the prescribed form according to Cap 301 Laws of Kenya.

5. Consequently, we find that the said notice to terminate tenancy dated 14<sup>th</sup> March 2024 is lawful and valid.

Issue (b) Whether the tenant is entitled to the orders sought in the application dated 14<sup>th</sup> May 2024.

6. The tenant approached this tribunal seeking for restraining orders against the landlord from evicting or interfering with his occupation of the suit premises, that the landlord restores the tenant’s access to the suit premises and that the landlord be compelled to accept rent at the rate of KES. 50,000 per month or in the alternative, the tenant be allowed to pay the said rent to the tribunal.
7. The tenant in his written submissions states that the landlord acted illegally by closing the premises a day after issuing the termination notice and that the mandatory period of 2 months had not lapsed.
8. The landlord on the other hand states in its written submissions that it is not true that it had locked the suit premises as alleged and that the landlord believes that the tenant is the one who locked up the suit premises perhaps to avoid being followed up to pay the outstanding rent arrears. The landlord also deposes the same in its replying affidavit.
9. We note that the court issued interim orders among other orders that the landlord restores the tenant’s access and control of the suit premises. During the hearings and mentions in this matter, the tenant did not at any time mention that the said orders had not been complied with. The tenant has also not presented any evidence to show that the said premises had been locked by the landlord.
10. The tenant has also not denied that he owes the landlord the claimed rent arrears of KES. KES. 1,669,500 as deposed in the landlord’s supporting affidavit dated 22<sup>nd</sup> May 2024.
11. In the case of Samuel Kipkori Ngeno and Another – vs- Local Authorities Pension Trust (Registered Trustees) & Another (2013) eKLR at paragraphs 9 and 12, the court held as follows: -

“9. A tenant’s first and main obligation is to pay rent as and when it becomes due for the landlord has the right to an income from his investment. Why would a tenant allow himself to fall into such huge arrears of rent”?

“12. The temporary injunction sought in the present application is an equitable remedy at the court’s discretion. He who comes to equity must come with



clean hands. A tenant who is in huge arrears of rent is underserving of the court's discretion. The court cannot be refuge of a tenant who fails to meet his principal obligation of paying rent as and when it becomes due".

12. Despite the alleged closure of the suit premises by the landlord, the foregoing case provides sufficient guidance in directing that the tenant pays rent arrears owed to the landlord and in default the court shall direct that the landlord be at liberty to use lawful means to recover the same.
13. Based on the establishment that the notice to terminate tenancy is legal, the tribunal is not able to grant orders compelling the landlord to accept rent from the tenant.
14. Consequently, the tribunal shall order that the application dated 14<sup>th</sup> May 2024 be dismissed with costs to the landlord/respondent.

**Issue (c) Whether the landlord is entitled to the orders sought in the application dated 22<sup>nd</sup> May 2024.**

15. The landlord filed the application dated 22<sup>nd</sup> May 2024 seeking for orders that the tribunal vacates orders made on 16<sup>th</sup> May 2024, that the landlord be allowed to break into the suit premises for purposes of taking an inventory of the property/items therein and thereafter keep such property in safe custody pending hearing and determination of the matter and that the court issue orders of compensation to the landlord for loss and damage due to the tenant's reference.
16. The landlord in his written submissions has directed the court to paragraph 16 of its replying affidavit where the landlord states as follows; -

"... by email dated 27th March 2024, the tenant/applicant effectively notified the landlord/respondent that the tenant/applicant would be moving out of the demised premises, thereby signalling that the tenant/applicant had agreed to comply with the said Tenancy Notice dated 14th March 2024. Particularly, the tenant/applicant stated thus:

"... our clients have turned up with high value business propositions that can allow us to settle the arrears in a couple of months even as we prepare to move out ... Meanwhile the CEO/Manager Concept Mahogany will furnish you with a payment plan to demonstrate our commitment to clear the arrears and move on ..."

17. We agree with the landlord in that the statement above is an indication that the tenant had agreed to comply with the said termination notice from the onset.
18. Upon perusal of the documents filed in this matter, there is no evidence of the proposed rent arrears payment plan by the tenant to show his willingness to pay the said rent arrears.
19. Furthermore, the tenant has not filed any reference under Section 6 of Cap 301, Laws of Kenya to oppose the notice to terminate tenancy dated 14<sup>th</sup> March 2024.
20. Section 6 of the Act states;

"A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal"



21. Based on the above analysis, the court finds that the landlord is deserving of the orders sought in the application dated 22<sup>nd</sup> May 2024 and this court shall vacate the orders issued on 16<sup>th</sup> May 2024.

**Issue (d) Who shall bear the costs of both applications?**

22. 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 award costs to the landlord/respondent.

**C. ORDERS**

23. Given the above analysis, the final orders which commend to us are;
- a. The Notice to terminate tenancy dated 14<sup>th</sup> March 2024 is hereby upheld and the tenant's tenancy in respect to the suit premises is hereby terminated.
  - b. The application dated 14<sup>th</sup> May 2024 is hereby dismissed with costs to the landlord/respondent.
  - c. The reference dated 14<sup>th</sup> May 2024 is settled in terms.
  - d. The landlord's application dated 22<sup>nd</sup> May 2024 is hereby allowed in terms of prayer 2.
  - e. The tenant shall vacate the suit premises within the next 21 days and in default shall be forcibly evicted therefrom by a Licensed Auctioneer who shall be provided with security by the OCS Kisumu Central Police Station.
  - f. The tenant is liable to pay rent arrears owing to the landlord up to and including the date of such vacation or eviction and in default, the landlord is at liberty to use all lawful means to recover rent arrears against the tenant.

SUBPARA g. The tenant shall pay costs of Kshs.50,000/- to the landlord.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6<sup>TH</sup> DAY OF DECEMBER 2024

HON. GAKUHI CHEGE

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON. JOYCE AKINYI OSODO

(MEMBER)

In the presence of:

Page 1 of 19

