



**Wanjohi v Ngunia (Tribunal Case E026 of 2024)
[2024] KEBPRT 1448 (KLR) (Civ) (30 September 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1448 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E026 OF 2024
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
SEPTEMBER 30, 2024**

BETWEEN

JOSEPH WANGONDU WANJOHI TENANT

AND

JUSTUS GACHIMU NGUNIA LANDLORD

JUDGMENT

A. Dispute Background

1. The tenant/applicant moved this Tribunal vide a Reference dated 6th March 2024 under Section 6(1) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301, Laws of Kenya objecting to the Landlord's notice to terminate tenancy dated 30th January 2024. The said notice was expressed to take effect on 1st May 2024.
2. The tenancy notice states that the Landlord intends to occupy the premises for a period of not less than one (1) year for purposes of running his own business.
3. The tenant simultaneously filed a motion dated 6th March 2024 seeking for restraining orders against the landlord from unlawful eviction or interference with his use and possession of the suit premises. He also seeks for the tenancy notice to be declared null and void and that the landlord refunds Kshs 1,310,000/= for the developments effected on the suit premises. He also claims for a goodwill of Kshs 1,000,000/= before taking over the suit premises.
4. The application is supported by the tenant's affidavit of even date and the grounds on the face thereof. The tenant deposes that he has occupied the suit premises known as Tetu/Unjiru/3167 at Kamakwa within Nyeri Town from the year 1987 and he currently pays a monthly rent of Kshs 8,000/=. He deposes that he pays the monthly rent timeously and has kept the premises in good condition.

5. The tenant further deposes that he has made several improvements of the suit premises which are set out at paragraph 8 of the affidavit at a cost of Kshs 1,310,000/= which he seeks to be refunded by the landlord. He also seeks for payment of Kshs 1,000,000/= goodwill as set out in paragraph 9 of the supporting affidavit.
6. On 11th March 2024, the application was considered ex-parte and interim injunctive orders granted pending hearing inter-partes on 24th April 2024.
7. Upon being served with the application, the landlord filed a replying affidavit sworn on 13th May 2024 wherein he deposes that he served a tenancy notice in the prescribed form upon the tenant seeking for vacant possession of the suit premises.
8. He further deposes that he intends to take over the premises for his children namely Juliana Wanjiru and Stephen Maria to run their own businesses as they are currently unemployed and it would be unfair to rent an alternative premises when the family had a property of their own. He denies any payment of goodwill by the tenant. He also denies that the tenant had effected improvements valued at Kshs 1,310,000/= save for the metallic door installed without his knowledge and consent.
9. The landlord deposes that the said improvements are not permanent and can be removed, including the machinery from the suit premises.
10. The tenant filed a supplementary affidavit sworn on 29th June 2024 wherein he deposes that the suit premises is owned by the landlord and six others who had no intention of evicting him. He further deposes that the reasons advanced by the landlord do not make sense as they own another premises adjacent to his which is similar in every way and has remained unoccupied for many years.
11. The tenant's position is that the landlord is only interested in taking over the suit premises since he has done several developments on it and not that they lack an alternative where his children can conduct their business. He further deposes that the landlord has not provided evidence of ownership of the suit premises.
12. On 1st July 2024, this Tribunal ordered its Rent Inspector to visit and inspect the suit premises for purposes of confirming whether the tenant had effected any improvements/constructions thereon and the nature thereof.
13. Pursuant to the said order, the suit premises were visited on 18th July 2024 and a report was subsequently filed which confirmed the improvements effected by the tenant thereon. The said report also confirms that the suit premises comprises of a permanent building partitioned into two big rooms one of which is empty and measures approximately 100 feet by 50 feet. The other one is used by the tenant herein as a metal workshop.
14. The application was directed to be disposed of by way of written submissions but only the tenant complied. The tenant's submissions are dated 27th August 2024.

B. Issues for determination

15. The following issues arise for determination; -
 - a. Whether the tenant is entitled to the reliefs sought in the reference and application dated 6th March 2024.
 - b. Who shall bear the costs of the reference and application?

Issue (a) Whether the tenant is entitled to the reliefs sought in the reference and application dated 6th March 2024

16. The tenant/applicant moved this Tribunal vide a Reference dated 6th March 2024 under Section 6(1) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Cap 301, Laws of Kenya, objecting to the Landlord's notice to terminate tenancy dated 30th January 2024. The said notice was expressed to take effect on 1st May 2024.
17. The tenancy notice states that the Landlord intends to occupy the premises for a period of not less than one (1) year for purposes of running his own business.
18. The tenant simultaneously filed a motion dated 6th March 2024 seeking for restraining orders against the landlord from unlawful eviction or interference with his use and possession of the suit premises. He also seeks for the tenancy notice to be declared null and void and that the landlord refunds Kshs 1,310,000/= for the developments effected on the suit premises. He also claims for a goodwill of Kshs 1,000,000/= before taking over the suit premises.
19. The application is supported by the tenant's affidavit of even date and the grounds on the face thereof. The tenant deposes that he has occupied the suit premises known as Tetu/Unjiru/3167 at Kamakwa within Nyeri Town from the year 1987 and he currently pays a monthly rent of Kshs 8,000/=. He deposes that he pays the monthly rent timeously and has kept the premises in good condition.
20. The tenant further deposes that he has made several improvements on the suit premises as set out in paragraph 8 of the affidavit at a cost of Kshs 1,310,000/= which he seeks to be refunded by the landlord. He also seeks for payment of Kshs 1,000,000/= goodwill as set out in paragraph 9 of the supporting affidavit.
21. On 11th March 2024, the application was considered ex-parte and interim injunctive orders granted pending hearing inter-partes on 24th April 2024.
22. Upon being served with the application, the landlord filed a replying affidavit sworn on 13th May 2024 wherein he deposes that he served a tenancy notice in the prescribed form upon the tenant seeking for vacant possession of the suit premises.
23. He further deposes that he intends to take over the premises for his children namely Juliana Wanjiru and Stephen Maria to run their own businesses as they are currently unemployed and it would be unfair to rent an alternative premises when the family had a property of their own. He denies any payment of goodwill by the tenant. He also denies that the tenant had effected improvements valued at Kshs 1,310,000/= save for the metallic door installed without his knowledge and consent.
24. The landlord deposes that the said improvements are not permanent and can be removed including the machinery from the suit premises.
25. The tenant filed a supplementary affidavit sworn on 29th June 2024 wherein he deposes that the suit premises is owned by the landlord and six others who had no intention of evicting him. He further deposes that the reasons advanced by the landlord do not make sense as they own another premises adjacent to his, which is similar in every way and has remained unoccupied for many years.
26. The tenant's position is that the landlord is only interested in taking over the suit premises since he has done several developments on it and not that they lack an alternative where his children can conduct their business. He further deposes that the landlord has not provided evidence of ownership of the suit premises.

27. On 1st July 2024, this Tribunal ordered its Rent Inspector to visit and inspect the suit premises for purposes of confirming whether the tenant had effected any improvements/constructions thereon and the nature thereof.
28. Pursuant to the said order, the suit premises were visited on 18th July 2024 and a report was subsequently filed which confirmed the improvements effected by the tenant thereon. The said report also confirms that the suit premises comprises of a permanent building partitioned into two big rooms, one of which is empty and measures approximately 100 feet by 50 feet. The other one is used by the tenant herein as a metal workshop.
29. It is not contested that the tenancy herein is controlled within the meaning and interpretation of Section 2(1) of Cap 301, Laws of Kenya. Sections 4(1) & (2) of the said statute provides as follows;

 “(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall 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 the following provisions of this Act.

 (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.”
30. We have looked at the tenancy notice served upon the tenant and confirmed that the same is in tandem with the foregoing legal provisions. The same is therefore valid.
31. Section 6(1) of the same statute provides as follows;

 “6. Reference to Tribunal

 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:

 Provided that a Tribunal may, for sufficient reason and on such conditions as it may think fit, permit such a reference notwithstanding that the receiving party has not complied with any of the requirements of this section.”
32. In compliance with the foregoing legal provision, the tenant filed the instant reference objecting to the notice. This Tribunal is therefore required to inquire into the said notice and decide whether or not, the reasons set out in the tenancy notice have been proved by the landlord in line with Section 9(1) of the said statute.
33. The ground for termination of tenancy set out in the landlord's tenancy notice is provided for under Section 7(1)(g) of the said statute. However, the landlord ought to have provided sufficient evidence to prove that he intends to occupy for a period of not less than one year the premises comprised in

the tenancy for the purposes or partly for the purposes of a business to be carried on by him therein or as his residence.

34. The Rent Inspector's report filed herein confirms that there is an empty premises measuring approximately 100 feet by 50 feet next to the suit premises. The landlord has not explained why he or his children cannot use the empty premises for the intended business.
35. Secondly, the landlord has not explained the nature of the proposed business and his settled intention to start the said business in the suit premises immediately. No business plans nor source of funds has been provided to this Tribunal by the landlord. We are therefore not convinced that the landlord has proved the ground for termination of tenancy set out in the impugned notice and the same is a candidate for dismissal.
36. In view of the foregoing, the tenant's reference and application dated 6th March 2024 ought to be allowed. The tenant has proved the principles set out in the case of *Giella v Cassman Brown & Co. Limited* [1973] E.A 358 by demonstrating that there are no good grounds for termination of his tenancy.
37. The short title to Cap 301, Laws of Kenya provides as follows;

“ An Act of Parliament to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto.”
38. We have already found that the tenancy notice issued by the landlord to the tenant herein is not justified. Any eviction based on it shall be illegal. It is therefore imperative to protect the tenant from being evicted by the landlord upon disapproval of the tenancy notice.

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

39. 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 of the reference and application to the tenant/applicant.

C. Orders

40. In view of the above analysis, the final orders which commend to us are;
 - a. The tenant's reference and application dated 6th March 2024 are hereby allowed in terms of prayers 2, 3, 4 & 5 of the application with costs.
 - b. The landlord shall not issue any other notice based on the same grounds in the next Twelve (12) months in line with Section 9(3) of Cap 301, Laws of Kenya.
 - c. The landlord shall pay costs of Kshs 25,000/= to the tenant which shall be defrayed against the rent account.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30th SEPTEMBER 2024

HON. GAKUHI CHEGE

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON. JOYCE AKINYI OSODO

(MEMBER)

In the presence of:

Miss Mwangi for the landlord

Mshila for the tenant