



**Kimotho v Gitonga (Tribunal Case E1192, E1193 & E1195 of 2023
(Consolidated)) [2024] KEBPRT 1632 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1632 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1192, E1193 & E1195 OF 2023 (CONSOLIDATED)
CN MUGAMBI, CHAIR
OCTOBER 31, 2024**

BETWEEN

JAMES NGARI KIMOTHO TENANT

AND

ELIZABETH WANGARI GITONGA LANDLADY

RULING

Introduction

1. On 20.8.2024, the following cases were consolidated; NAIROBI BPRT Case Numbers E1192/2023, E1193/2023 and E1195/2023. Case No. E1193/2023 was selected as the lead file.
2. In all three files, the Landlady issued notices to terminate tenancy to the Tenants on the grounds that;
“The Landlady intends to undertake major renovations/reconstruction of the existing commercial building which cannot be done without taking vacant possession.”
All the notices to the Tenants are dated 22.9.2023 with an effective date of 1.12.2023.
3. The Tenants in opposition to the notices to terminate their tenancies all filed their References to the Tribunal and hence the hearing.

The Landlady’s Case

4. The Landlady adopted her statement dated 1.7.2024 as her evidence in chief and also produced the documents in her list of documents as her exhibits 1 to 5 in support of her case.
5. The statement of the Landlady which now forms part of her evidence may be summarized as follows;-
 - a. That the Tenants have been doing business in the suit premises known as Nyahururu Municipality Block 6/305.



- b. That after several visits from Health & Sanitation Officials from the county, the Landlady informed the Tenants that she would be embarking on renovation of the suit premises.
 - c. That the Landlady went ahead and procured the building plans and the necessary permits from the County Government.
 - d. That the Landlady has taken out a loan from her Sacco, AWAN SAVINGS & CREDIT CO-OPERATIVE SOCIETY LTD to enable her carry out the renovations and the said loan is to be repaid through rental proceeds from the renovated premises.
 - e. That the Landlady then issued notices to the Tenants to terminate their tenancies.
 - f. That the Landlady declined to take any rent from the Tenants in January 2024 and informed them that she required vacant possession of the premises.
 - g. That the Landlady assured the Tenants of the availability of space to rent on a priority basis once the renovations were completed.
 - h. That the Tenants declined to move out and instead filed References to the Tribunal.
 - i. That the loan advanced to the Landlady is gaining interest and the materials procured for the renovations are wasting away which will result in additional costs.
6. UPON CROSS EXAMINATION by Counsel for the Tenants, the responses by the Landlady may be summarized as follows;-
- a. That the suit premises is in the name of the Landlady and the deceased ANN WAIRIMU KANIU.
 - b. That all the Tenants have been in the suit premises for over ten years.
 - c. That the Landlady is willing to give the Tenants priority after the renovations are done.
 - d. That the size of the premises will reduce after the renovations.
 - e. That James Ngari who sells furniture can take up two shops after the renovations to continue with his business.
 - f. That the Landlady's family has another building but it is not adjacent to the suit premises. It belongs to the Landlady's siblings, June and Mwigigi.
 - g. That the Landlady herself does not have any other premises.
 - h. That the Landlady's intention is not to increase rent.
 - i. That the Landlady cannot renovate the premises while the Tenants are inside.
7. The Landlady's witness Mr. Lewis Ndung'u Wairimu adopted his statement dated 1.07.2024 as his evidence in chief and which statement may be summarized as follows hereunder;-
- a. That the suit premises devolved from his grandfather to his mother Ann Wairimu Kaniu (deceased) and his aunt Elizabeth Wangari Gitonga on equal terms, he therefore owns the suit premises with the Landlady in equal shares.
 - b. That he is a student at the Technical University of Kenya and relies on the rental income from the premises for his upkeep.



- c. That the suit premises has deteriorated attracting the attention of the officers from the County Health and Sanitation Department who have visited the premises.
 - d. That as a consequence, the witness and the Landlady decided to renovate the premises and they have obtained a loan and all necessary approvals and permits to carry out the said renovations.
 - e. That since the said renovations cannot be carried out while the Tenants are in the premises, the witness and the Landlady issued notices to terminate tenancy to the Tenants. The Tenants have however been adamant and have refused to vacate from the premises.
 - f. That part of the rental proceeds were to go into servicing the loans and as things stand, the witness and the Landlady may have to repay the loan out of their own pockets.
8. UPON CROSS EXAMINATION, the witness stated;
- a. That he did not have any photographs to show that the premises have deteriorated.
 - b. That the County Government can only have dealt with his Aunt, Elizabeth.

The Tenant's case

9. The Tenants evidence was led by James Ngari Kimotho whose statement dated 31.7.2024 may be summarized as follows;-
- a. That he has been a Tenant in the suit premises since the year 1997 and he has had no dispute with the Landlady and the other Tenants who are parties to this suit have also been there for a number of years.
 - b. That the Landlady's intention in issuing the notice to vacate is meant to compel the Tenants to pay a higher rent.
 - c. That some shops in the suit premises have been vacated but the Landlady has not renovated them.
 - d. That from the approved plans held by the Landlady, the suit premises is being converted into stalls which is not practicable for the kind of business the Tenants undertake.
 - e. That the Tenants are currently servicing loans which payment is dependent on the business they carry out in the said premises.
 - f. The witness (Tenant) additionally testified orally that he runs a carpentry workshop and show room while Grace Wangui sells school uniforms and John Muhota runs a hotel business.
 - g. The Tenant further testified that he has not been able to locate an alternative premises.
 - h. That his lease goes up to April 2026 and he sought a grace period of at least three (3) years to be able to vacate the premises.
10. UPON CROSS EXAMINATION by Counsel for the Landlady, the Tenant responses may be summarized as follows hereunder;-
- a. That he has been in the suit premises for over twenty years and the premises has not been renovated since it was constructed.
 - b. That the public health officials visited the suit premises and raised the issue of toilets and renovations, the Landlady did the toilets and the renovations.



- c. That the building does not need any renovations.
- d. That the Tenant has not approached the Landlady to give her three stalls as per the drawings.
- e. That he does not know if Mr. John Muhota has sublet the premises, he runs a hotel and an Mpesa shop.
- f. That it would appear that the Landlady wants to construct the premises as opposed to renovating the same.
- g. That the Tenant has no evidence that he has searched for an alternative premises.
- h. That he has no evidence to show that the loan he took was for his furniture business.
- i. That the Tenant does not owe the Landlady any rent.
- j. That though the notice to vacate was issued to all the five Tenants on the premises, only two Tenants have vacated.

Analysis and determination

11. The only issue that arises for determination in this Reference is whether the Landlady has established by way of evidence the ground upon which she seeks to terminate the tenancies of the Tenants in the consolidated suits.
12. The ground of termination that the Landlady is required to prove is to be found under Section 7(1) of Cap 301 which provides as follows;-

“That on termination of the tenancy, the Landlord intends to demolish or reconstruct the premises comprised in the tenancy or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof and that he could not reasonably do so without obtaining possession of such premises.”
13. What then is the nature of renovation or reconstruction that the Landlady intends to visit on the suit premises?
14. The Landlady has produced in court the building plans for the intended renovations. I have seen the building plans and they clearly show that the Landlady intends to construct shops and stalls. I see there are eight shops and eight stalls. Considering that the current occupancy of the suit premises comprised of five Tenants, two of whom have since moved out, it is not farfetched to conclude that the re-construction of the premises to accommodate sixteen (16) fresh units would require that the Tenants vacate to enable the Landlady to carry out the said construction.
15. The Landlady has also produced in court a notification of approval to renovate an existing commercial building. The notification is the one dated 25.5.2023.
16. On the question whether the Landlady has demonstrated that she has the ability to construct the said structures, the Landlady has shown that she has obtained a loan from AWAN SAVINGS & CREDIT CO-OPERATIVE SOCIETY and the funds have been released to her through the issuance of two cheques.
17. The Tenants have resisted the Landlady's notice to terminate their tenancy on the allegation that the Landlady intends to increase the rent. I have not seen any evidence of any such intention. The Tenants have further stated that some shops within the premises have been vacated and yet the Landlady has not



renovated them. While this may be so, it is also true that the said Tenants vacated after the Landlady issued them with notices to vacate. The only reason the Tenants in this case are still in the premises is because they opposed the notice to terminate their tenancy. I also do not think the Landlady can construct the premises in accordance with the building plans if she was to undertake the construction of only the premises left vacant by the Tenants who have already left.

18. The Tenants have also made out a case that they have been in the suit premises for a long time, all of them above ten years. I doubt that this would be a material consideration where a Landlord has issued a valid notice under Section 4(2) of the Act and proceeded to give credible evidence to support the notice. The length of time a Tenant has been in a business premises cannot therefore be a valid reason to oppose a notice to terminate tenancy but may be a consideration when determining what grace period, the Tenant may be granted to vacate the suit premises after a tenancy has been terminated.
19. I am in the circumstances of this case satisfied that the Landlady has established a firm and settled intention to reconstruct the suit premises and the said reconstruction cannot be undertaken while the Tenants are in occupation of the suit premises. (See the case of; Auto Engineering Ltd vs M. Gunella & Co. Ltd [1978] eKLR).
20. Consequently, I approve the terms of the tenancy notice dated 22.9.2023 subject to the following amendments:
 - a. That the tenancies in the consolidated suits are hereby terminated.
 - b. That the Tenants in the consolidated suits shall render vacant possession of the units they occupy in the suit premises within the next sixty (60) days from the date of this Ruling.
 - c. That the Tenants failing to vacate as ordered under paragraph (b) above, the Landlady will be at liberty to evict the said Tenants using a licensed auctioneer.
 - d. That the Tenants in the consolidated suits shall continue to pay rent for the units they occupy up to and including the date of vacation of the suit premises.
 - e. That the Tenants will bear the costs of the Reference.
 - f. This file is closed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31ST DAY OF OCTOBER, 2024.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of Ms. Waceke for the Landlord and Ms. Kisiangani holding brief for Mr. Wachira for the Tenants

