



**Muroki v Muchiri (Tribunal Case E107 of 2022)
[2023] KEBPRT 1303 (KLR) (5 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1303 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E107 OF 2022
CN MUGAMBI, CHAIR
MAY 5, 2023**

BETWEEN

MARGARET NJERI MUROKI APPLICANT

AND

SAMUEL MUCHIRI RESPONDENT

RULING

Introduction

1. The landlord's application dated 7.9.2022 seeks orders that the tenant vacates the suit premises and be further restrained from trespassing on the suit premises.
2. The tenant's application dated 25.11.2022 seeks orders that the tenant be allowed to file Reference to the landlord's notice to terminate tenancy, that the landlord's notice be held to be of no effect for want of proper service upon the tenant.

The Landlord's Depositions in support of the Application dated 7.9.2022

3. The landlord has deponed in his affidavit that the Respondent is a tenant in Plot No. 2847 Tumaini, at Kalou paying a monthly rent of Kshs. 12,000/= exclusive of water and electricity services.
4. The landlord/Applicant further depones that the tenant has failed to honour a statutory notice to vacate the premises served upon him and has accumulated rent arrears of Kshs. 72,000/= at the rate of Kshs. 12,000/= per month.
5. The landlord in his further affidavit depones that rent was increased to Kshs. 12,000/= per month in April 2022 and the tenant was notified about the increment, the rent arrears as at October 2022 was Kshs. 84,000/=.



The Tenant's application in response to the Landlord's application & Affidavit dated 7.9.2022

6. The landlord in her affidavit has deponed that she has been a tenant in the suit premises paying a monthly rent of Kshs. 6,000/= exclusive of water and electricity.
7. The tenant has also deponed that the increment of rent from Kshs. 6,000/= to Kshs. 12,000/= was unprocedural.
8. The tenant also admits to being served with the notice to terminate tenancy but states that she was unable to trace the tribunal offices in time to file her reference and the landlord's application was filed before she could file the reference.
9. The tenant has further deponed that the landlord refused a structured payment of the increased rent and deponed that the tenant vacates the premises instead.
10. The tenant depones further that he has been in the premises for over ten years and has put up structures therein.
11. The tenant in her affidavit admitted to be in rent arrears of Kshs. 42,000/= as at October 2022 and is willing to clear the arrears in monthly installments of Kshs. 6,000/=.

The Tenant's depositions in support of her Application dated 25.11.2022

12. The tenant has deponed in her affidavit that her Advocates have informed her that she had a recourse to the court in seeking to file her reference to the landlord's notice out of time.
13. The tenant further depones that her Advocates have informed her that the landlord's affidavit is defective and an abuse of the court's process as it does not have the court stamp.
14. The tenant therefore depones that it is in the interest of justice that she is allowed to file and argue her opposition to the landlord's notice to terminate tenancy.

The Landlord's depositions in response to the Tenant's Application dated 25.11.2022

15. The landlord has deponed that the notice to terminate tenancy was properly served upon the tenant in the presence of witnesses and the failure by the tenant to file the reference led to the filing of the landlord's application.
16. The landlord further depones in his affidavit that the rent was increased when the tenant constructed temporary structures in the suit premises and thereby extending her business.
17. The landlord further depones that, the tenant is in rent arrears amounting to Kshs. 120,000/=.

Analysis and determination

18. The issues that arise for determination in both applications are the following:-
 - a. Whether the tenant ought to be allowed to file her reference in objection to the landlord's notice to terminate tenancy.
 - b. Whether the tenant is in rent arrears.
 - c. What orders ought to be made in the respective applications.



Issue A

19. It is common ground that the tenant was served with the notice to terminate her tenancy. It is also not disputed that the tenant did not file her reference in time or at all. The consequences of this non-compliance by the tenant is that the notice to terminate tenancy becomes effective on the date shown in that notice under Section 10 of [Cap 301](#).
20. The proviso to Section 6(1) of [Cap 301](#) provides 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.
- This effectively means that the tribunal may, in appropriate circumstances, allow the tenant to file reference to the tribunal out of time or put sufficiently, even after the date the notice is to take effect.
21. The tenant has expressed her desire to oppose the landlord's notice to terminate her tenancy. The reason the tenant gives for her failure to file her reference is that she did not know the location of the tribunal and the procedure to be followed in responding to the notice. I do note the honesty of the tenant in quickly admitted the fact that she had actually been served with the notice. Failure to comprehend the procedures of the tribunal and the physical location of the tribunal, while not proper excuses in law, nonetheless call for the exercise of my discretion in favour of believing the tenant's prayer for leave to file the reference out of time.

Issue B

22. The landlord has admitted to increasing the monthly rent to Kshs. 12,000/= per month in the month of April 2022. The rent the tenant admits to be the agreed rent is Kshs. 6,000/=. On 27.1.2023 when this matter came up for hearing, the tenant admitted owing the landlord rent arrears in the sum of Kshs. 60,000/=. The tenant was ordered to pay that amount on or before 30.1.2023. failing which the landlord was at liberty to levy distress for rent. It is obvious that the tenancy relationship between the parties herein is a controlled tenancy. That being the case, the landlord could not under the law increase the rent before issuing the tenant with a statutory notice to increase rent. (See Section 4(2) of [Cap 301](#)). The rent payable therefore ought to be calculated on the basis of Kshs. 6,000/= per month. Both parties have not filed any statements of accounts and I am not able to tell what the rent outstanding or not would be.

Issue C

23. In the circumstances, I will make the following orders;-
- That the tenant is allowed to file reference against the landlord's notice to terminate tenancy dated 20.6.0222 within the next fourteen (14) days.
 - The tenant is to continue paying rent at the rate of Kshs. 6,000/= per month.
 - The landlord will be at liberty to levy distress for rent for any unpaid rent based on the stipulated rate of Kshs. 6,000/= per month.
 - The reference dated 7.9.2022 is determined in the above terms.
 - Each part will bear their own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF MAY 2023.

HON. CYPRIAN MUGAMBI



CHAIRPERSON

5. 5.2023

In the presence of;

Mr. Muriithi for the tenant

In the absence of the landlord.

