



**Mwangi v Theuri (Tribunal Case E164 of 2024)  
[2024] KEBPRT 1328 (KLR) (Civ) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1328 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E164 OF 2024  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
SEPTEMBER 18, 2024**

**BETWEEN**

**MARGARET WANGARI MWANGI ..... LANDLORD**

**AND**

**JOHN MAINA THEURI ..... TENANT**

**RULING**

**A. Dispute background**

1. The landlord/applicant moved this Tribunal vide a Reference dated 4<sup>th</sup> July 2024 under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 with a complaint that the tenant was served with a notice to terminate tenancy which took effect on 1<sup>st</sup> July 2024 but he never filed a reference. He also failed to surrender vacant possession of the suit premises.
2. The landlord accuses the tenant of breaching the terms of the tenancy agreement by making alterations without her prior consent. The landlord pleads that the tenant intends to sublet the premises without prior her knowledge or consent.
3. The landlord therefore seeks for an order to compel the tenant to give vacant possession to allow her carry out her own business in the premises.
4. She also prays that the tenant be ordered to renovate and restore the premises back to its original structure which the tenant altered by removing the inside wall and doors without her prior consent.
5. The landlord also seeks for an order to restrain the tenant from subletting and/or doing any alterations in the premises without her consent or knowledge with the Officer Commanding Station (OCS) Likoni Police Station ensuring compliance. She also seeks for costs of the suit.



6. The landlord/applicant simultaneously filed a notice of motion under a certificate of urgency dated 4<sup>th</sup> July 2024 seeking for the same orders pleaded in her reference. The application is premised on the grounds on the face thereof and the landlord's affidavit of even date annexed thereto.
7. The landlord deposes that she rented the suit premises situate in Likoni, Mombasa County to the tenant at a monthly rent of Kshs 12,000/=. The tenancy agreement is attached as annexure AM1.
8. According to the landlord, the tenant failed to give vacant possession despite having been served with a notice to terminate his tenancy which became effective on 1<sup>st</sup> December 2023. The notice is attached as annexure AM2 and the affidavit of service of Festus Kyalo Mutinda as annexure AM3.
9. The landlord accuses the tenant of altering the terms of the tenancy agreement by making alterations without her prior consent. The tenant is further accused of tempering with the meter box and wiring in the premises. The alterations will require renovations and restructuring according which will cost a lot to the landlord to restore the premises to its original state. Annexure am3 which is indicated to contain the costs of the renovations is missing from the court record.
10. The landlord subsequently filed an amended supporting affidavit sworn on 31<sup>st</sup> July 2024 changing the effective date of the tenancy notice to read 1<sup>st</sup> July 2024 instead of 1<sup>st</sup> December 2023 as appearing in her previous affidavit.
11. It is noteworthy that no leave to amend was sought before the said affidavit was filed neither has any legal provision been cited to justify the amendment. The said affidavit is therefore struck out from the court record for being irregular.
12. The tenant filed a replying affidavit sworn on 9<sup>th</sup> August 2024 wherein he denies service of the termination notice. He sought for cross examination of the process server to explain how he served the notice.
13. The tenant deposes that there was no agreement with the landlord that he should not undertake any renovations as he did not sign the agreement marked JMT1. He denies harboring any intention to sublet the suit premises as alleged by the landlord and the landlord was devising a scheme to evict him illegally. He therefore seeks that the said notice be declared defective, null and void.
14. The landlord filed a further affidavit sworn on 4<sup>th</sup> August 2024. No leave to file the said affidavit was sought or granted. The same is equally struck out of the court record for being irregular.
15. The matter proceeded through oral submissions on 15<sup>th</sup> august when both parties reiterated the contents of their pleadings. The tenant accused the landlord of having an intention to sell goodwill for his premises yet he has employees and family members who rely on the business. He stated that he has both debtors and creditors for his business and that he could have challenged the notice if he was served with it.
16. The landlord on the other hand reiterated that the termination notice was served through one Festus Mutinda who was accompanied by her unnamed son. The notice was allegedly served upon a woman by name Maureen Theuri who was found at the suit premises. The landlord stated that she intends to use the suit premises for purposes of selling soap.

## **B. Issues for determination**

17. The following issues arise for determination; -



- a. Whether the reliefs sought in the landlord's reference and application dated 4<sup>th</sup> July 2024 ought to be granted or denied.
- b. Who shall bear the costs of the suit?

**Issue (a) Whether the reliefs sought in the landlord's reference and application dated 4<sup>th</sup> July 2024 ought to be granted or denied.**

18. The landlord/applicant moved this Tribunal vide a Reference dated 4<sup>th</sup> July 2024 under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 with a complaint that the tenant was served with a notice to terminate tenancy which took effect on 1<sup>st</sup> July 2024 but he never filed a reference. He also failed to surrender vacant possession of the suit premises.
19. The landlord accuses the tenant of breaching the terms of the tenancy agreement by making alterations without her prior consent. The landlord pleads that the tenant intends to sublet the premises without her prior knowledge or consent.
20. The landlord therefore seeks for an order to compel the tenant to give vacant possession to allow her carry out her own business in the premises.
21. She also prays that the tenant be ordered to renovate and restore the premises back to its original structure which the tenant altered by removing the inside wall and doors without her prior consent.
22. The landlord also seeks for an order to restrain the tenant from subletting and/or doing any alterations in the premises without her consent or knowledge with the Officer Commanding Station (OCS) Likoni Police Station ensuring compliance. She also seeks for costs of the suit.
23. The landlord/applicant simultaneously filed a notice of motion under certificate of urgency dated 4<sup>th</sup> July 2024 seeking for the same orders pleaded in her reference.
24. According to the landlord, the tenant failed to give vacant possession despite having been served with a notice to terminate his tenancy which became effective on 1<sup>st</sup> December 2023. The notice is attached as annexure AM2 and the affidavit of service of Festus Kyalo Mutinda as annexure AM3.
25. The tenant filed a replying affidavit sworn on 9<sup>th</sup> August 2024 wherein he denies service of the termination notice. He sought for cross examination of the process server to explain how he served the notice.
26. It is imperative to note that the landlord did not avail the process server for cross examination as demanded by the tenant neither did she avail her unnamed son to confirm that he is the one who pointed out the tenant to the process server at the time of service. The process server's affidavit of service does not disclose the name of the woman who was allegedly served with the notice of termination of tenancy.
27. The footnote on the notice to terminate marked AM2 indicates that the notice was served on a lady who did not disclose her name. She allegedly accepted service but did not sign. The process server indicates that he also served a copy of the notice via WhatsApp upon the tenant. The screenshot of the WhatsApp Messenger is not attached to the affidavit of service to corroborate the alleged physical service.
28. In the premises, we are not satisfied that the tenant was served with the termination notice and we are therefore unable to grant the reliefs sought in the landlord's reference and application dated 4<sup>th</sup> July 2024. We shall however allow the landlord to serve a fresh notice upon the tenant if she so desires.



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

29. 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 the costs of the reference and application to the tenant being the successful party.

**C. Orders**

30. In conclusion, the following final orders commend to us; -
- a. The landlord's reference and application dated 4th July 2024 are hereby dismissed with costs to the tenant.
  - b. The landlord shall be at liberty to serve a fresh tenancy notice if she so wishes.
  - c. The tenant's costs of the case are assessed at Kshs 12,000/= to be defrayed against one (1) month's rent.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF SEPTEMBER 2024.**

**HON. GAKUHI CHEGE**

**(PANEL CHAIRPERSON)**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON. JOYCE AKINYI OSODO**

**(PANEL MEMBER)**

In the presence of:

Tenant in person

Landlord in person

