



**Rotich v Ochieng (Tribunal Case E046 of 2022)  
[2023] KEBPRT 1140 (KLR) (14 December 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 1140 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E046 OF 2022  
P MAY, MEMBER  
DECEMBER 14, 2023**

**BETWEEN**

**SIMEON KIMARU ROTICH ..... LANDLORD**

**AND**

**BILL CLINTON OCHIENG ..... TENANT**

**JUDGMENT**

1. The landlord approached the Tribunal by filing the reference dated 28<sup>th</sup> April, 2022 seeking break in orders against the tenant whom they accused of having locked the demised premises together with the landlord's property. The landlord sought orders to break in, inspect and repossess the premises. Contemporaneously with the reference the landlord had filed an application by way of certificate. The application was dispensed with and parties proceeded to the hearing of the reference. I will summarize each party's case below:

**Summary of the landlord's case**

2. The landlord in their testimony during the hearing stated that he had leased the demised premises to the tenant for a period of 6 months. He admitted that he had been paid a deposit of ksh 20,000/= out of the agreed rent of ksh 60,000/=. He averred that he had subsequently leased another room within the premises which had a pool table and was used to play pool games.
3. The landlord in laying out the chronology of the events that led to the present dispute accused the tenant of tampering with the wiring of the premises which prompted him to make a report to the nearby police station. He also stated that the tenant damaged a polythene that was used at the pool table and agreed to replace the same.
4. The landlord maintained that the demised premises were connected to the national grid thus the electrical works that were undertaken were illegal as they were done without his express consent and to his detriment.



5. On the claims that the tenant carried out renovations which he now sought compensation, the landlord expressly denied the same and called in 2 other witnesses who were tenants within the premises who testified against the said assertions. He also maintained that the tenant operated the premises to a full term thus the claim for compensation was not tenable.

### Summary of tenant's case

6. The tenant in their statement and testimony stated that he entered into a lease agreement with the landlord for a period of 6 months. He narrated that he had prior to entering into the lease seen an advert on Facebook indicating that the premises were available for lease. He had therefore responded to the same and engaged in negotiations which culminated in the lease.
7. He stated that he had paid a deposit of ksh 20,000/= which is not denied by the landlord. He claimed that he had advanced the landlord some soft loan and had undertaken renovations which he now sought compensation for. He further stated that he had lost business because of breach caused by the landlord and equally sought for compensation as he was making a total sum of ksh 30,000/= per day.

### Analysis

8. At the close of the hearing, the parties proceeded to file their written submissions in support of their respective positions. I have considered the submissions on record, the evidence tendered and the other documents filed and wish to proceed as follows:
9. At the onset, the parties do not dispute to entering into a lease agreement whose terms were explicit. The rent payable was ksh 10,000/= and the landlord acknowledged receipt of the deposit. The term of the lease is also not contested.
10. On the issues under contention, the first was the lettable area as this had a bearing on whether the tenant later leased the pool table. The other issue that was contested by the parties was the question of renovation and whether the tenant is entitled to compensation for the same.
11. At the onset it is important to state that the parties admitted that they entered into a written lease. The terms of the lease are agreed save for the lettable area. It is a longstanding principle of law that parties to a contract are bound by the terms and conditions thereof and that it is not the business of the Courts to rewrite such contracts. In *National Bank of Kenya Ltd v Pipe Plastic Samkolit (K) Ltd* (2002) 2 E.A. 503, (2011) eKLR the Court of Appeal at page 507 stated as follows: -

“A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.”
12. In *Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd* (2017) eKLR the Court of Appeal further stated that: -

“We are alive to the hallowed legal maxim that it is not the business of Courts to rewrite contracts between parties, they are bound by the terms of their contracts, unless coercion, fraud or undue influence are pleaded and proved.”
13. The parties herein agreed that the term of the lease was for a period of 6 months. The tenant accused the landlord of interfering with possession thus denying him quiet possession and that he did not complete his term as a tenant. The landlord called in 2 other witnesses to rebut this position and adduced evidence to disprove the said allegations. On a balance of probabilities, it is clear that the tenant occupied the demised premises to a full term.



14. It is trite law that he who alleges must prove. This is in accordance with the Evidence Act of Kenya in Section 107, which places a burden of proof on the person who desires any court to give judgment as to any legal right or liability, which is dependent on the existence of facts, which he asserts. The maxim has been grounded in law under Section 107 of the Law of Evidence. The same was enunciated by Justice Majanja in Evans Otieno Nyakwana v Cleophas Bwana Ongaro [2015] eKLR when he said that: "...As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of section 107 (1) of the Evidence Act (Chapter 80 of the Law of Kenya), which provides:

"107. Whoever desires any court to give judgment as to any legal right or liability  
(1) dependent on the existence of facts which he asserts must prove that those facts exist..."

15. I will now move to the next contested issue of the alleged renovations that were undertaken. The landlord maintains that the same was not done. The tenant produced receipts of the labour cost incurred. The tenant in their testimony stated that the premises were being used as a hotel which is a similar line of business as the one he undertook.

It is also important to restate the context of the transactions herein. The lease was for a term of 6 months. Renovations unless in special circumstances are undertaken by a tenant who wishes to occupy the premises for a longer period which has not been proven herein. Besides the other tenants stated that the premises were fit for use thus there was no need to undertake the renovations. The tribunal is therefore not convinced that the same were undertaken.

16. Having made the above findings, I will now proceed to assess whether the parties later engaged in a separate lease for the pool table or not. The tenant skirted around the issue and instead chose to maintain that he had leased the entire premises. Again, the landlord proved that the initial lease even as per the Facebook post which has been adduced by the tenant was for the hotel premises.

17. In view of the foregoing, the Tribunal comes to a conclusion that the landlord has proven their case. The prayer by the tenant for compensation is untenable and falls flat. The landlord succeeds.

18. In the end, the following orders commend themselves:

- a. The landlord's reference dated 28<sup>th</sup> April, 2023 is allowed and the tenant shall forthwith yield up any occupied part of the premises that they had not handed over.
- b. The OCS of the nearest police station shall ensure compliance with order(a) above
- c. Each party shall bear their own costs.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14<sup>TH</sup> DAY OF DECEMBER 2023**

**HON. PATRICIA MAY - MEMBER**

**14.12.2023**

**In the presence of**

Mr. Bett for the Landlord

The firm of Angu Kitigil for the Tenant - absent

