



**Mwaura v Mbela (Tribunal Case E286 of 2023)
[2024] KEBPRT 1419 (KLR) (16 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1419 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E286 OF 2023
CN MUGAMBI, CHAIR
AUGUST 16, 2024**

BETWEEN

NELLY SAMBA MWAURA TENANT

AND

JOSECK MBELA LANDLORD

RULING

Introduction

1. The Landlord's notice to terminate tenancy is dated 11.9.2023 and is opposed by the Tenant's Reference dated 22.11.2023. The notice to terminate tenancy, (hereinafter called the notice) is brought on the grounds;

“That on termination of tenancy, the Landlord intends to carry out his own business for a period of more than one year.”
2. The Landlord's evidence may be summarized as follows;-
 - a. That the Tenant came into the suit premises in the year 2022 and she runs the business of a wines and spirits shop and a hardware shop.
 - b. That the Tenant breached the law by hosting drunkards at the wine shop which affected the Landlord's young family.
 - c. That around 2022, the Tenant would send her rent via M-pesa but the Landlord reversed the transactions.
 - d. That when the dispute between the parties was reported to the County Commissioner, she advised that the Landlord could not remove the Tenant from the suit premises as she had a valid license to operate her business in a specific premises.



- e. That in July 2023, the Tenant was arrested by a team led by the Deputy County Commissioner, the Landlord who himself is an assistant chief was not part of this team. During the arrest, the Tenant had a bitter exchange with the Deputy County Commissioner as a result of which the Landlord asked the Tenant to vacate the premises and also in anger proceeded to remove the doors to the suit premises.
 - f. That the reason that the Landlord wants the Tenant to leave his premises is that she has breached all terms of the tenancy agreement, has made the Landlord look bad in the eyes of his superiors and the Tenant's business is not good for the Landlord's young family.
3. Under cross examination by the Tenant, the Landlord's response may be summarized as follows:-
- a. That the Landlord visited the Tenant's premises on 28.7.2023 and asked her to lock up the premises.
 - b. That the Tenant was arrested, charged and discharged under Section 87(a) of the Criminal Procedure Code.
 - c. That the suit premises is not fenced but the Landlord later fenced it.
 - d. That the Landlord removed the door to the suit premises and later re-fixed the same back.
 - e. That the front of the compound is composed of the business premises, the gate remains open and the fence does not affect the Tenant's business.
4. The Tenant's evidence in opposing the notice to terminate tenancy may be summarized as follows:-
- a. That the Tenant confirms the receipt of the Landlord's notice to terminate her tenancy dated 11.9.2023.
 - b. That the Tenant has two shops wherein she runs the business of a wines and spirits shop and a hardware shop respectively.
 - c. That the Landlord made a condition that the Tenant could only have the tenancy if she took up the two shops and not the one of them.
 - d. That the Tenant renovated the floors and ceilings of both shops and employed an assistant to help her run the business.
 - e. That when the Tenant was told to vacate the suit premises, she went to the OCS Mwatate who informed her that he could not assist her. The Deputy County Commissioner Mwatate also said he could not intervene and it was agreed that the Tenant continues with her business.
 - f. On 28.7.2023, the Landlord told the Tenant to vacate the premises because the Deputy County Commissioner had ordered so. The Tenant went to see the said Commissioner who told her that she was going to close down the suit premises and any other business operated by the Tenant within the sub-County.
 - g. That the Tenant was subsequently arrested, charged and later discharged at the Wundanyi Law Courts and allowed to go re-open her business.
 - h. That on 8.8.2023, the Landlord gave the Tenant another notice to vacate and further on 16.8.2023, the Landlord removed all the doors to the premises, the police declined to assist the Tenant though she recorded a statement. The Tenant thereafter came to the Tribunal and filed a case against the Landlord.



- i. That the Landlord had also disconnected electricity.
 - j. That the Tenant cannot vacate the premises as it is her source of livelihood and she has renovated the same.
 - k. That the Tenant's workers have been severally arrested on allegation that they are selling alcohol outside the permitted hours, all this while the case is still pending in court.
 - l. That in February 2024, the Tenant was denied an operation license on the basis that the owner of the suit premises did not want her in the suit premises, this has crippled the Tenant's business.
5. On cross examination by the Landlord, the Tenant's responses may be summarized as follows:-
- a. That the 2nd premises was given to the Tenant to fulfil a condition.
 - b. That the Landlord was responsible for the rumours that spread on the internet that the Tenant was not paying rent.
 - c. That the Tenant fixed a new ceiling for both shops and renovated the floors.
 - d. That in 2023, the Tenant took out a loan to secure the premises/her property.
 - e. That the Tenant knew that the Landlord wanted her out of the premises.

Analysis and determination

6. The only issue that arises for determination is whether or not the Landlord has established by way of evidence, that the grounds upon which the tenancy is being terminated have been proved.
7. At the outset of this Ruling, I did state that the Landlord has issued the notice upon the Tenant to terminate the tenancy on the basis that the Landlord would like or intends to carry out his own business in the suit premises for a period of more than one year. This ground of termination is to be found under the provisions of Section 7(1)(g) of Cap 301 of the Laws of Kenya which provides as follows:-

“subject as hereinafter provided that on termination of the tenancy the Landlord himself 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 purpose of a business to be carried on by him therein or at his residence.”
8. I have perused the evidence of the Landlord in support of his notice to terminate the tenancy and I find the same to be at complete variance with the grounds of termination set out in the notice. The Landlord in his evidence has stated that he would like to terminate the tenancy because the Tenant has breached all the terms of her tenancy and that the Tenant's business is bad for the Landlord's family as he has young children and the Tenant hosts drunkards at the suit premises. The Landlord also testified that the Tenant's business is putting him on a collision course with his superiors. None of these reasons have been set out in the Landlord's notice to terminate tenancy.
9. It is evident that at all material times, the Tenant was licensed to carry out the business she was carrying out and it is also clear that at the time of renting out the premises to the Tenant, the Landlord was well aware of the business the Tenant was to carry out. The County Administration cannot therefore turn around and pretend not to recognize the Tenant's license nor can the Landlord suddenly wake up and pretend to have realized that the Tenant's business is bad for the landlord's young family.



10. What emerges from the evidence is that the Landlord who is an administrator of the rank of an Assistant chief is unduly exploiting his position to have the Tenant illegally forced out of the suit premises. The Tenant was for example charged at the Wundanyi Law Courts and later discharged after producing her documents, the landlord removed the Tenant's doors to the suit premises and when the Tenant reported him to the police, the OCS Mwatate declined to assist her on the pretext that the culprit was an administrator. The invasion of the Tenant's premises by the Deputy County Commissioner and her team was also suspect and in my view, was meant to further cause the Tenant to vacate the suit premises.
11. I find the removal of the doors to the suit premises by the Landlord, and which he admits to doing, to be an illegal act flying on the face of good order and the law, an act of impunity and an abuse of the Landlord's position as an Administrator and it is also further evidence that the Landlord is bent on using all means to have the Tenant vacate the suit premises. This the court cannot allow.
12. I have perused the notice issued by the Landlord dated 11.9.2023. The notice is valid and meets the statutory requirements but while that may be so, the Landlord did not lead any evidence relevant to the establishment of the grounds set forth in the notice. In this instance therefore, I find no evidence on the record to support the ground that the Landlord intends to use the suit premises for his own purposes and the notice is therefore not proved and the notice shall be of no effect.
13. It is trite law that parties are bound by their own pleadings. In the case of; David Otieno Migone vs South Nyanza Sugar Co. Ltd (2018) eKLR, the court held as follows;-

“It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence however strong that tends to be at variance with the pleadings must be disregarded. That settled position was re-affirmed by the court of Appeal in the case of; Independent Electoral & Boundaries Commission & Another vs Stephen Mutinda Mule & 3 Others [2014] eKLR which cited with approval the decision of the Supreme Court of Nigeria in Adetoken Oladeji [NYG] vs Nigeria Breweries PLC SC 91/2002 where Aderaji JSC expressed himself thus on the importance and place of pleadings...

“...It is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings as put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded, ... in fact, that parties are not allowed to depart from their pleadings as on the authorities basis as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.”

14. In the same case, the court proceeded to state;

“In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called “any other business.” In the sense that points other than those specific may be raised without notice.”



15. That said, it is my finding in disposing of this matter, that the Landlord has failed to establish the grounds upon which the notice to terminate tenancy is brought and consequently, the Tenant's Reference dated 22.11.2023 is allowed.
16. The Tenant will have the costs of the Reference.
17. This file is ordered closed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF AUGUST 2024.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of the Tenant and in the absence of the Landlord

