



**Ngare v Thige & another (Tribunal Case E006 of 2024)  
[2024] KEBPRT 682 (KLR) (Civ) (26 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 682 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E006 OF 2024  
CN MUGAMBI, CHAIR  
APRIL 26, 2024**

**BETWEEN**

**CHARLES KAMAU NGARE ..... APPLICANT**

**AND**

**JAMES KARIME THIGE ..... 1<sup>ST</sup> RESPONDENT**

**RAVEWAYS COMMERCIAL & INSURANCE AGENCY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Application by the Tenant dated 9.1.2024 seeks orders that the Landlady be restrained from closing the business premises or from in any manner interfering with the Applicant's tenancy and also seeks an order to the effect that if the Landlord has closed the business premises, the Tenant be allowed to break therein with the assistance of the OCS Nyahururu police station.

**The Applicant's depositions**

2. The Applicant has deponed in his affidavit sworn on 9.1.2024 that he has been a Tenant in the Respondent's premises known as LR. Nyahururu Municipality Plot No. 1283 for the last three (3) years paying a monthly rent of Kshs. 5,000/= and he has no rent arrears.
3. The Applicant has also deponed that on 10.11.2023, the Respondent served him with an illegal notice to vacate the suit premises and it is the Applicant's view that the Landlord's intention is to frustrate the Tenant to vacate the suit premises without considering the money that the Tenant has invested in the premises.
4. It is the Tenant's further deposition that the tenancy between the parties herein is a controlled tenancy which cannot be determined without the leave of the Tribunal and whose terms cannot be altered otherwise than in accordance with the provisions of Cap 301 of the Laws of Kenya.



## **The Respondent's depositions**

5. The Landlord's replying affidavit sworn on 24.1.2024 may be summarized as follows:-
- a. That three years ago, the 1<sup>st</sup> floor rooms of the suit premises were vacant and the Tenant approached the Respondent to lease the corridor area of the ground floor for the purposes of running a hotel business. The said corridor was for accessing the 1<sup>st</sup> floor and it was agreed that the Tenant would occupy the space temporarily and would vacate if the Respondent required the corridor for the purposes of accessing the 1<sup>st</sup> floor.
  - b. That the rent for the premises was agreed at Kshs. 10,000/= per month and in mid-2023, the Landlord approached the 2<sup>nd</sup> Respondent to manage the suit premises and a lease agreement for the premises was executed on 13.6.2023.
  - c. That the 2<sup>nd</sup> respondent advised the 1<sup>st</sup> Respondent to renovate the 1<sup>st</sup> floor to attract more Tenants and upon which advise, the 1<sup>st</sup> Respondent requested the 2<sup>nd</sup> Respondent to inform the Tenant of the need to vacate the space he was occupying in order to allow for access to the 1<sup>st</sup> floor. Consequently, on 10.12.2023, the Tenant was duly notified by a letter to vacate the said premises.
  - d. That the Tenant was also verbally informed of the intended renovations.
  - e. That the Tenant has completely blocked the access to the 1<sup>st</sup> floor making it of no economic value.
  - f. That the space occupied by the Tenant is not meant to be a hotel as it is a corridor meant to give access to the 1<sup>st</sup> floor of the suit premises.
  - g. That the Tenant is in rent arrears of Kshs. 29,000/= and he is also selling alcohol in the said premises which the Respondent thinks the Tenant is not licensed to do.

## **Analysis and determination**

6. The only issue that arises for determination in this Application is whether the Tenant is entitled to the prayers sought in his Application and whether the Tenant's complaint before the Tribunal has merits.
7. The lease agreement dated 13.6.2023 does not state the term of the lease but has provision for termination at clause 3 thereof where it is provided as follows:-

“I shall give one-month notice if I decide to vacate the premises and do the same to the Landlord.”

Though not exactly coherent, I understand clause 3 of the lease agreement to be stating that either party to the agreement can terminate the same by giving a one month's notice to so terminate to the other party. In these circumstances, I do hold that the tenancy relationship between the parties herein is a controlled tenancy and therefore governed by the provision of Cap 301 of the Laws of Kenya.

8. The notice to vacate that the Tenant is complaining about is the one dated 10.11.2023. Both parties agree that this is the impugned notice.
9. The tenancy between the parties being a controlled tenancy, the Landlord is required under the provisions of Section 4(2) of the Act (Cap 301) to issue the mandatory notice to terminate tenancy. The



notice under Section 4(2) of Cap 301 is a statutory notice in the prescribed form provided under the Act. I have perused the letter/notice to vacate dated 10.11.2023 and it does not amount to the notice provided for under the Act. It is not in the prescribed form and neither does it meet the provisions of Section 4(2), (4) and (5) of Cap 301 and it is therefore an invalid notice and of no legal consequences. This is so because Section 4(1) of Cap 301 provides as follows:-

“Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated and no term or condition in or right or service enjoyed by the tenant of any such tenancy shall be altered otherwise than in accordance with the following provisions of this Act.”

Further, Section 4(2) of Cap 301 on notices to terminate tenancy provides as follows:-

“A landlord who wishes to terminate a controlled tenancy or to alter to the detriment of the tenant any term or condition in or right or service enjoyed by the tenant under such a tenancy shall give notice in that behalf to the tenant in the prescribed form.”

10. The reasons given by the landlord in his replying affidavit as the basis of terminating the tenancy herein ought therefore to have been some or all of the reasons for termination to be incorporated in a notice to terminate tenancy in the prescribed form under Section 4(2) of the Act.
11. The allegation by the Respondent that the Tenant is selling alcohol in the suit premises is really neither here nor there and I do not consider it to be an issue for the determination by the Tribunal. Nothing turns on this allegation.
12. The Landlord has also claimed that the Tenant is in rent arrears amounting to Kshs. 29,700/=. The Tenant has not denied this allegation by the Landlord and in the circumstances and under the provisions of Section 3(1) of the [Distress for Rent Act](#) Cap 293 of the Laws of Kenya, I do find that the Landlord has the right to levy distress for rent.
13. Consequently and in view of my findings above, I proceed to make the following orders:-
  - a. That the Respondents are hereby restrained from in any manner whatsoever Illegally interfering with the Tenant’s quiet use and occupation of all that Tenant’s business premises on L.R. No. Nyahururu Municipality Plot No. 1282.
  - b. That the Tenant to pay all outstanding rent arrears within the next thirty (30) days of this Ruling Failing which the Respondent shall be at liberty to levy distress for the said rent using a licensed auctioneer.
  - c. That the notice to vacate dated 10.11.2023 is declared invalid and of no legal consequence.
  - d. That the Complaint by the Tenant is merited and is allowed in the terms of the orders issued hereinabove.
  - e. That the Tenant shall have the costs of this Application and the Reference.
  - f. That this file is ordered closed.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF APRIL, 2024**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**



**Delivered in the presence of;**

**Mr. Nderitu Komu for the Landlord**

**Mr. Charles Kamau Ngare- Tenant present in person**

