



**Kimani v Machot (Tribunal Case 375 of 2023)
[2023] KEBPRT 659 (KLR) (3 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 659 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 375 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
NOVEMBER 3, 2023**

BETWEEN

GRACE WANGARI KIMANI LANDLORD

AND

MANUT MADUT ANEI MACHOT TENANT

RULING

A. The Dispute Background

1. The landlord moved this tribunal vide a reference under section 12 (4) of cap 301 dated 3rd April, 2023 requesting the court for an injunction against the tenant to deliver vacant possession of her premises.
2. The Landlord subsequently filed a Notice of Motion of even date seeking the following orders;
 - a. That the Tribunal be and is hereby pleased to issue a mandatory injunction against the Tenant/ Respondent to deliver vacant possession of the premises known as Nairobi/ Block 32/303 Highview Estate Phase 1 pending hearing and determination of the Application.
 - b. That the Tribunal be pleased to grant an order allowing the Landlord/ Applicant to enter and repossess the suit premises with the assistance of the OCS Kilimani Police Station to ensure compliance of the orders.
 - c. That this Tribunal be and is hereby pleased to grant an order allowing the Landlord/ Applicant any other consequential relief it deems fit and just in the circumstances.
 - d. That costs of the application be borne by the Respondent.



3. The Notice of Motion is supported by an affidavit sworn on 3rd April, 2023 wherein it is deposed as follows;
- i. That the landlord served the tenant with a notice to terminate tenancy on 1st February 2023 which was to take effect on 1st April 2023 but the tenant never responded nor vacated the premises.
 - ii. That the tenant has become a trespasser in the premise for failure to file a reference to the tribunal and therefore prompting the landlord to file the notice of motion herein seeking orders for vacant possession.
 - iii. That the Landlord is intending to renovate the said premises and convert it for personal use.
 - iv. That the continued occupation by the tenant has occasioned the landlord loss and damage for reasons that it has precluded the landlord from earning rental income from the suit premises at the prevailing market rates.
4. The application is opposed through a Replying Affidavit dated 22nd June, 2023 wherein it is deposed as the follows;
- i. That the court should not grant the aforementioned orders as the Application was misconceived, incompetent and bad in law.
 - ii. That the tenant's monthly rent payments have always been paid on time and he has not violated any terms of the tenancy agreement.
5. At the hearing of the application on 24th May, 2023, it was ordered that the matter be disposed of by way of written submissions and both parties complied with the landlord/applicant filing on 14th July, 2023 and the tenant/respondent filing on 17th July, 2023. We shall consider the submissions while dealing with the issues for determination.

B. List of Issues for Determination

6. The following are the issues for determination;
- a. Whether the applicant is entitled to the reliefs sought.
 - b. Who bears the costs of the application?

Whether the applicant is entitled to the reliefs sought.

7. Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* states 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.”
8. The Act further states that where a notice is given of termination of a controlled tenancy, the date of termination shall not be earlier than the earliest date on which, but for the provisions of the Act, the tenancy would have, or could have been terminated.



9. From the evidence presented in court, it is clear that the Landlord issued a notice to terminate tenancy dated 1st February, 2023 which is in the prescribed form and in accordance with the applicable law.
10. Section 6 of the Act states;

“A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal”

11. The tenant failed to oppose the notice by way of a reference as stated above and has since refused to vacate the premises.
12. In her submissions, the Applicant seeks a mandatory injunction order against the Tenant/ Respondent to deliver vacant possession of the premises known as Nairobi/ Block 32/303 Highview Estate Phase 1.
13. The Application is seeking for orders which are meant to allow her to repossess the suit premises.
14. The circumstances under which the Court would grant a Mandatory Injunction were stated out by the Court of Appeal in the Case of Malier Unissa Karim –Versus - Edward Oluoch Odumbe (2015) eKLR as follows: -

“A Mandatory Injunction can be granted on an interlocutory application as well as at the hearing but in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the Court thinks ought to be decided at once or if the act done is simple and summary one which can be easily remedied, or if the Defendant attempts to steal a march on the Plaintiff, a Mandatory Injunction will be granted on an Interlocutory application”.

15. In the case of Kenya Breweries Ltd & Another vs Washington O. Okeyo [2002] eKLR, the Court of Appeal stated as follows on mandatory injunctions;

“A mandatory injunction ought not to be granted on an interlocutory application in the absence or special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”

16. From the evidence and pleadings presented to this tribunal on the circumstances herein, the orders of mandatory injunction sought ought to be granted.
17. We have taken into consideration that the landlord followed the proper procedure in giving the notice to terminate tenancy. The landlord also provided sufficient justification for issuing the notice, stating that she planned to renovate the suit premises and use it for personal purposes.
18. The fact that the tenant did not object to the notice within the time frame specified by law gives the landlord sufficient reasons to evict it from the suit premises as the notice has already taken effect under section 10 of Cap.301, Laws of Kenya.



Who bears the costs of the application?

19. In regard to costs, the same are always at the Tribunal's discretion under section 12(1) (k) of cap. 301, Laws of Kenya but always follow the event unless for good reasons otherwise ordered. We have no reason to deny costs to the landlord.

Orders

20. In conclusion, the following final orders commend to us;
- a. An order of mandatory injunction is hereby granted against the Tenant/ Respondent directing her to deliver vacant possession of the premises known as Nairobi/ Block 32/303 Highview Estate Phase 1 and in default thereof shall be evicted therefrom with the assistance of the OCS of the police station in whose jurisdiction the suit premises is situated.
 - b. The Landlord's costs of the case are assessed at Kshs. 25,000/- all inclusive.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD NOVEMBER 2023

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

HON GAKUHI CHEGE

(MEMBER)

