



**Gichuru v Karundi & 2 others (Tribunal Case E003 of 2024)
[2024] KEBPRT 853 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 853 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E003 OF 2024
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
JUNE 7, 2024**

BETWEEN

JOHN NJOGU GICHURU APPLICANT

AND

VIKING KARUNDI 1ST RESPONDENT

JOSEPH MUGA 2ND RESPONDENT

SUSAN KARUNDI 3RD RESPONDENT

RULING

A. Dispute Background

1. The tenant/applicant moved this tribunal vide a reference under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301, with a complaint that the landlord has threatened to evict the tenant by issuing verbal notice to vacate and intended to demolish the suit premises contrary to Cap 301, Laws of Kenya.
2. The tenant/applicant filed a notice of motion under a certificate of urgency dated 4th January, 2024 in which he sought the following orders; -
 - i. That the application be certified urgent.
 - ii. That the respondents be ordered to allow the tenant unlimited access to the suit premises pending the hearing and determination of the case.
 - iii. That the respondents be restrained from letting out the business premises to another tenant pending the hearing and determination of the case.



- iv. That the landlord, his servants/agents be restrained from interfering with the tenant's quiet occupation of the suit premises at Plot No. 12 Kiamariga Market, pending the determination of the complaint.
 - v. That the O.C.S Kiamariga Police Station do assist with compliance of the orders.
 - vi. That costs of the application be provided for.
3. The applicant filed a supporting affidavit of even date in which he deposes as follows; -
- i. That the applicant rented the premises from September 2021.
 - ii. That the premises were rented to the applicant by the 1st respondent after entering into a tenancy agreement which was to expire by 31st December, 2027 at a monthly rent of KES.5,000 and has no rent arrears.
 - iii. That the 2nd and 3rd respondents have threatened to evict the applicant forcefully and intend to demolish the suit premises.
 - iv. That the applicant/tenant has done repairs and improvements to the suit premises at an estimated cost of KES. 570,000.
 - v. That the respondents' interference has led to irreparable losses and damages.
4. On 5th January 2024, the court granted interim orders restraining the respondents from interfering with the tenant's peaceful occupation of the suit premises pending the hearing of the application inter-partes.
5. The application is opposed vide a replying affidavit dated 5th January, 2024 in which the 1st respondent deposes as follows; -
- i. That the respondents are owners of the suit premises which was rented to the applicant/tenant who is in rent arrears of KES. 56,000 and which they seek the tenant to pay.
 - ii. That the matter was reported at Kiamariga Police Station under OB No. 16 of 2024 where the applicant admitted and promised to pay. A copy of the original letter and OB in support is attached.
 - iii. That the court ought to grant orders of eviction.
6. The applicant/tenant filed a further affidavit dated 28th February 2024 in which he deposes as follows; -
- i. That the 1st respondent has committed himself through a statement dated 20th February 2024 that there is no conflict between him and the applicant herein.
 - ii. That the applicant is the legitimate tenant of the 1st respondent.
7. The 2nd respondent filed another affidavit which is undated in which he deposes as follows; -
- i. That the suit premises were allocated to the respondents by their late grandfather. A copy of the certificate of grant is annexed as "V2".
 - ii. That when they visited the property, they found that the 1st respondent had leased out the suit premises to the applicant herein yet he had no capacity to do so as he is not the administrator of the estate of the late grandfather.



- iii. That out of respect for the 1st respondent, they agreed before the Chief that the applicant would continue to occupy the suit premises until December 2023.
 - iv. That according to the agreement, it was agreed that KES. 3,000 was to be paid to the 2nd and 3rd respondents and KES. 2,000 was to be paid to the 1st respondent.
 - v. That pursuant to the agreement, the applicant duly paid the sum of KES. 23,200 and then stopped making any payments afterwards to the 2nd and 3rd respondents. A copy of Mpesa screenshots is annexed as “V3”.
 - vi. That the applicant owes the 2nd and 3rd respondent KES. 12,800.
8. At a court hearing on 1st March 2024, the Tribunal directed that the application be disposed of by way of written submissions. The 2nd and 3rd respondents complied by filing their written submissions dated 5th March, 2024 and the applicant/tenant filed his dated 24th April, 2024. We shall consider both submissions while dealing with the issues for determination.

B. Issues for determination

9. The following are the issues for determination; -
- a. Whether the tenant/applicant is entitled to the orders sought in the application dated 4th January, 2024.
 - b. Who shall bear the costs of the application?

Issue (a) Whether the tenant/applicant is entitled to the orders sought in the application dated 4th January, 2024.

10. The applicant/tenant approached this tribunal seeking protection against unlawful eviction by the respondents herein.
11. Upon perusal of the documents filed herein, there is no evidence of any notice to terminate tenancy according to [Cap 301](#), Laws of Kenya which stipulates 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.”
12. There being no valid notice to terminate tenancy, we find that the respondents’ insistence on the tenant vacating the suit premises is illegal and the tenant/applicant is therefore entitled to the orders sought in the application dated 4th January, 2024.
13. Section 12(4) of [Cap. 301](#), Laws of Kenya gives this Tribunal the following powers: -
- “4. In addition to any other powers specifically conferred on it by or under the Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant and may make such order thereon as it deems fit”.
14. The foregoing legal provision empowers this Tribunal to determine the issues raised by the tenant as well as those raised by the landlord. The 2nd and 3rd respondents in their written submissions dated 5th



March, 2024 as well as an undated supporting affidavit have raised the issue of ownership of the suit premises.

15. The issue of ownership of the suit premises is not within this Tribunal's jurisdiction as this Tribunal's jurisdiction is conferred by the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap. 301, Laws of Kenya in respect of controlled tenancies.
16. The tenant/applicant has provided evidence of rent payment to the 1st respondent only as shown by the Mpesa statements and rent payment receipts issued to him by the 1st respondent. The 2nd and 3rd respondents have not shown any evidence of rent payment or statements of rent accounts in support of their case. They have shown screenshots of Mpesa messages showing payment of a sum of KES. 23,200 which they claim was payment made to them, however the messages do not show the recipient of the money, hence the court is unable to determine the validity of this claim.
17. In addition, the lease agreement dated 30th July, 2021, which is annexed to the tenant's supporting affidavit shows that the agreement was between the applicant and the 1st respondent.
18. Based on the above analysis we find that there is no landlord/tenant relationship between the tenant/applicant and the 2nd and 3rd respondents.

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

19. 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. Costs of the application shall be awarded to the tenant/applicant.

C. Orders

20. In conclusion, the following orders commend to us; -
 - a. The application dated 4th January, 2024 is hereby allowed as prayed.
 - b. The undated reference is settled in terms.
 - c. Costs of KES. 10,000 to the tenant/applicant to be offset against the rent account.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF JUNE, 2024

HON. JOYCE AKINYI OSODO- (PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE - (MEMBER)

In the presence of:

Tenant present in person

No appearance for Landlord

