



Gacheru v Nakuru Teachers Housing Cooperative Society Ltd (Tribunal Case E142 of 2023) [2023] KEBPRT 1120 (KLR) (Civ) (8 December 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1120 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E142 OF 2023
CN MUGAMBI, CHAIR
DECEMBER 8, 2023**

BETWEEN

PETER NJOROGI GACHERU TENANT

AND

**NAKURU TEACHERS HOUSING COOPERATIVE SOCIETY
LTD LANDLORD**

RULING

1. The Tenant's notice of motion dated 1.8.2023 seeks orders that the landlord be restrained from in any manner interfering with the Tenant/Applicant's quiet occupation and enjoyment of the premises at Miti Mingi/Mbaruk Block 5/1007 (Kiunguria) (hereinafter the suit premises) pending the hearing and determination of this matter. The Applicant has also sought an order that, the notice issued by the Respondents be dismissed, police assistance and costs.

The Tenant's depositions

2. The Tenant's affidavit in support of the application may be summarized as follows:-
 - a. That the Applicant has been the Respondent's tenant in the suit premises paying a monthly rent of Kshs. 6,500/= since 1.12.2022.
 - b. That the Respondent has served the tenant with an illegal notice to vacate due to a rent balance of Kshs. 2,500/= which action the tenant takes to be made in bad faith.
 - c. That the applicant is a protected tenant.



The Landlord's depositions

3. The Respondent's replying affidavit sworn by Mr. Peter Michael Kibathi may be summarized as follows:-
 - a. That the application lacks merit
 - b. That it is true that the Applicant is a tenant of the Respondent via an oral agreement at an agreed monthly rent of Kshs. 6,500/=.
 - c. That the tenant has been paying rent erratically and hence in breach of the terms of the lease agreement.
 - d. That the tenant had earlier sought the period of three months to vacate the said premises which he never did.
 - e. That the tenant has never ran a business in the suit premises as evidently his Saw Mill business never took off, the business permit attached to the tenant's affidavit is meant to hoodwink the court.
 - f. That the tenant's reference to the Tribunal is made in bad faith and meant to frustrate the Respondent and should be dismissed with costs.

The Tenant's Further Affidavit

4. The tenant's further affidavit sworn on 19.9.2023 may be summarized as follows:-
 - a. That the tenant is in occupation of the suit premises and has been carrying out his business from there.
 - b. That it is not true that the tenant had sought three months to vacate the premises and further contests that the letter annexed by the landlord dated 5th May is different from the one that the tenant wrote to the landlord.
 - c. That the tenant's business has not kicked off well but he is still at the premises.
 - d. Both parties have filed their written submissions and I will consider them in this ruling.

Analysis and determination

5. The only issue that arises in this application is whether the tenant is entitled to the relief sought in his application.
6. The tenancy between the parties herein arises out of an oral agreement between the parties and is therefore a controlled tenancy within the meaning ascribed to the said tenancy under Section 2 of Cap 301.
7. The tenant's complaint is that the landlord has issued him with an illegal notice of termination dated 19.6.2023 without any valid reason. The landlord does not deny issuing the said notice. I have perused the notice dated 19.6.2023. It is a one month notice to vacate on the grounds that the tenant pays rent erratically and has an outstanding balance of Kshs. 2,500/=. The tenancy herein being a controlled tenancy, the landlord was obligated under the provisions of Section 4 of Cap 301 to issue a statutory notice to terminate the tenancy.



8. The notice issued by the landlord in this case does not meet the formal and mandatory requirements of a notice under Section 4(2) 4(4) and 4(5) of Cap 301 and is therefore invalid. To this extent, I agree with the tenant that the notice issued by the landlord is illegal.
9. Both parties have agreed that the tenant has rent arrears amounting to Kshs. 2,500/=. Again, the landlord is desirous of terminating the Applicant's tenancy on account of the said/admitted arrears, all it has to do is to issue a notice to that effect under the provisions of Section 4 of Cap 301. The landlord, though reserves the right to levy distress for rent for the said amount under the provisions of the [distress for rent Act](#) Cap 293 of the Laws of Kenya.
10. The landlord's allegation that the tenant's business did not kick off well is neither here nor there and is not really a factor to be considered in the circumstances of this case.
11. In conclusion, the orders which commend themselves to the Tribunal and which I hereby make are the following;
 - a. That the landlord is enjoined from illegally evicting the tenant from the suit premises or from in any manner interfering with the tenant's quiet occupation and use of the suit premises.
 - b. That the notice to terminate tenancy issued by the landlord to the tenant and dated 19.6.2023 is issued illegally and is therefore of no effect.
 - c. That the tenant will clear all rent arrears due within the next thirty (30) days from the date of this ruling failure which the landlord shall be at liberty to levy distress for rent for the rent arrears.
 - d. That the complaint by the tenant is allowed in terms of prayers (a), (b) and (c) above.
 - e. That the landlord shall bear the costs of the complaint and the application.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF DECEMBER 2023

HON. CYPRIAN N. MUGAMCI - CHAIRPERSON

8.12.2023

In the presence of Ms. Njoroge holding brief for Mr. Kariu for the landlord

In the absence of the tenant

