



**Gituma & another v Magiri (Tribunal Case E012 of 2024)  
[2024] KEBPRT 1099 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1099 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E012 OF 2024  
P MAY, MEMBER  
JULY 26, 2024**

**BETWEEN**

**DENNIS GITUMA ..... 1<sup>ST</sup> TENANT**

**LUCY NJERI ..... 2<sup>ND</sup> TENANT**

**AND**

**DAVID NKANATA MAGIRI ..... LANDLORD**

**RULING**

1. The tenants through the notice of motion 28<sup>th</sup> March, 2024 sought a plethora of orders against the landlord. The tenants craved for the Tribunal's intervention to materially restrain the landlord from interfering with their quiet and peaceful possession of the premises. The application was premised on the grounds set out on the face of the application and those enumerated in the supporting affidavit sworn by the 1<sup>st</sup> applicant.
2. The application was placed before the Tribunal on 28<sup>th</sup> March, 2024 whereby the Tribunal issued interim orders in favour of the tenants pending the inter- partes hearing. The landlord upon being served with the application duly entered appearance and filed their response in opposition to the same vide the replying affidavit sworn on 18<sup>th</sup> April, 2024. The parties elected to canvass the application by way of written submissions. There has been compliance by both parties. I have considered the application, the annexures and response thereto and the submissions on record and would proceed to dispense with the same as follows:

**Summary of the tenants' case**

3. The tenants stated that they entered into a tenancy agreement on 24/11/2020 for a period of 2 years. The agreed rent as per the agreement was Kshs. 75,000. It was the tenants averments that they developed the demised premises and were operating a hotel business. They stated that upon the lapse



of the term of the tenancy they entered into an oral lease for a period of 5 years with the rent being reviewed to Kshs. 100,000. The tenants also stated that the landlord through his children approached them with a view of changing the payment details of rent. When the tenants sought for clarification, they were issued with a notice to terminate tenancy dated 9<sup>th</sup> March 2024.

4. The tenants averred further that the landlord proceeded to disconnect their water connection. The disconnection was done despite them having paid all water bills. It was on this background that they were constrained to approach the Tribunal for appropriate reliefs.

### Summary of the landlord's case

5. The landlord admitted that there indeed exists a tenancy relationship between himself and the tenants. He also admitted to the tenancy being for a period of 2 years and that it was further extended for a period of 2 years and not five years as alluded to by the tenants. The landlord accused the tenants of defaulting in paying rent as when it fell due and that they had equally been inconsistent in paying the utility bills including water bills.
6. The tenants filed a further affidavit in rebuttal to the averments contained in the replying affidavit. The tenants have reiterated that the tenancy was for a term of 5 years and that the landlord has continued to frustrate them.

### Analysis

7. The rival submissions filed by the parties have addressed the merits of the prayers sought by the tenants. The prayers sought are largely in the nature of orders of temporary injunction. The parties buttressed their respective positions on the triple requirements which were set for the grant of temporary orders of injunction in the celebrated case of *Giella vs Cassman Brown & Company Limited*, (1973) 358 EA as follows:
  - (i) The applicant must establish a prima facie case with a probability of success.
  - (ii) The applicant must then demonstrate that he or she stands to suffer irreparable loss or damage which cannot be adequately compensated by an award of damages.
  - (iii) Where there is doubt on the above, that the balance of convenience tilts in favour of the applicant
8. A prima facie case was defined in the case of; *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* (2003) eKLR at page 8/10 by Bosire JA (as he then was) to mean:-“So what is a “prima facie case”. I would say that in civil cases, it is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.
9. Guided by the foregoing decisions, I am required to determine whether the tenants have brought themselves within the principles of granting an injunction based on the materials presented before me.
10. The parties herein have submitted to the jurisdiction of the Tribunal. Termination of a controlled tenancy is provided for under section 4 of *cap 301*. The Section provides that;

“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 provisions of this Act”



11. Termination is by issuance of a notice which shall not be less than two months. The notice is required to comply with the requirements of section 4 (2) and (4) respectively which provide that:

“4(2) 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”.

“4(4) No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, as shall be specified therein”.

11. The prescribed form is the one found in form A of the schedule to the Act. The letters alluded to above, the ones dated 9<sup>th</sup> March, 2024 do not therefore amount to the notice to terminate tenancy as envisaged under section 4(2) of [Cap 301](#). The tenants have therefore proven to have a prima facie case. In the circumstances, it is in the interest of justice that the application is allowed so as to maintain the subject matter pending the hearing of the reference.

12. In conclusion, the following final orders commend to the Tribunal:

- a. The Applicants’ application dated 28<sup>th</sup> March, 2024 is allowed with no orders as to costs.
- b. The parties to file and exchange witness statements and documents that they shall seek to rely on during the hearing.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF JUNE, 2024.**

**HON. PATRICIA MAY - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Ms. Kaaria for the Tenant and Ms. Musa for the Landlord

Court: Mention on 18.07.2024

**HON. PATRICIA MAY - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

