



**Andanje v Muya (Tribunal Case E059 of 2023)
[2023] KEBPRT 1332 (KLR) (7 June 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1332 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E059 OF 2023
CN MUGAMBI, CHAIR
JUNE 7, 2023**

BETWEEN

SAMSON KHANDA ANDANJE APPLICANT

AND

VINCENT MUYA RESPONDENT

RULING

Introduction

1. The landlord's application dated 11.4.2023 seeks an order that the Respondent/tenant do vacate the premises to allow the Applicant/landlord do major renovations on the said premises. The landlord has also sought police assistance to ensure compliance with the orders through the OCS Malava Poce Station. Costs of the application have also been sought.

The Applicant's Depositions

2. The landlord has sworn an affidavit in support of his application wherein he has deponed that the tenant is in rent arrears of Kshs. 12,000/= unpaid since December 2022.
3. The landlord has also deponed that the suit premises need to be renovated and particularly the doors, the roof and the walls which renovations cannot be done while the tenant is in the premises.
4. The landlord has further deponed that the Health department has issued him with a statutory notice to effect repairs of the premises.
5. It is the landlord's view that unless the orders are issued and the tenant vacates the premises, the premises may collapse causing harm to the tenant and other surroundings resulting in loss to the landlord.



Analysis and Determination

6. The landlord's complaint dated 13.4.2023 and upon which the application is predicated upon is to the effect that the landlord wants to do major renovations to the business premises as per the notice from the Public Health Services. The complaint also seeks that the tenant pays all the rent arrears.
7. From a reading of the complaint and the application, it is clear that what the landlord really desires to do is to terminate the tenancy between himself and the tenant for the purposes of renovating the suit premises. The landlord has sought to terminate the tenancy by a complaint filed under Section 12(4) of Cap 301, which I hold to be the wrong procedure.
8. Controlled tenancies can only be terminated under the provisions of Cap 301, which where relevant provides as follows:-

Section 5A(1)

“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 terms 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”

Section 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.”

9. In these circumstances, the landlord was required to issue a notice to terminate the tenancy under Section 4(2) above as the Act does not provide for any other mode of initiating a termination of a controlled tenancy.
10. Granted that the complaint by the landlord would have comprised of a ground to terminate tenancy under Section 7(f) of Cap 301, that ground ought to have been framed in the statutory notice to terminate tenancy to enable the tenant exercise his options under the Act upon receipt of the notice.
11. The tenant has not opposed the application by the landlord. The landlord's deposition that the tenant owes rent arrears in the sum of Kshs. 12,000/= has not been contested. I therefore do find on a balance of probabilities that the tenant owes the said rent.

Final Disposition

12. Having arrived at the above conclusions, the following orders are hereby issued:-
 - a. The landlord's application dated 11.4.2023 is dismissed with no orders as to costs.
 - b. The tenant is hereby ordered to pay all rent arrears to date within the next thirty days from the date of this ruling failing which the landlord will be at liberty to levy distress for rent.
 - c. The landlord's complaint is determined in terms of prayer (a) and (b) above.
 - d. This ruling will apply to BPRT Case No. E060/2023, *Samson Andanje Vs Shaban Wechuli*.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 7TH DAY OF JUNE, 2023

HON. CYPRIAN MUGAMBI - CHAIR PERSON



7. 6.2023

In the presence of;-

Mr. Andanje the landlord

