



Maryrosa Healthcare Limited v Otieno; Milton Consultants (Interested Party)
(Tribunal Case E008 of 2023) [2023] KEBPRT 474 (KLR) (1 September 2023) (Ruling)

Neutral citation: [2023] KEBPRT 474 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E008 OF 2023
A MUMA, AG. CHAIR
SEPTEMBER 1, 2023

BETWEEN

MARYROSA HEALTHCARE LIMITED TENANT

AND

AMOS OTIENO LANDLORD

AND

MILTON CONSULTANTS INTERESTED PARTY

RULING

A. Parties and Representatives

1. The applicant Maryrosa Healthcare is the tenant who rented space on the suit property located in Gem/Kagilo/1187 for the business (hereinafter known as the 'tenant').
2. The Firm of Sala and Mudany Advocates represents the tenant in this matter
3. The respondent are the registered proprietor of the suit premises and herein the Landlord.
4. The firm of Juliet Kokeyo & Co. Advocates represents the Landlord in this matter.

B. The Dispute Background

5. The current suit was instituted by the tenant vide a Reference dated January 30, 2023 and a notice of motion application under certificate of urgency dated 3rd March 2023 under section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) cap 301. The tenant was seeking orders restraining the landlord from evicting them.
6. The respondents have filed a replying affidavit averring that they issued the tenant with sufficient notice prior to seeking to increase the rent.



C. List of Issues

7. The issues raised for determination are as follows: Whether the Notice to terminate tenancy issued by the landlord and the reasons advanced are valid?

D. Analysis and Findings

Whether the Notice to increase the rent issued by the landlord and the reasons advanced are valid?

8. The present suit stems from the reference and application by the tenant in which they were seeking protection from eviction and distress by the landlord.
9. Having perused the file, I observe that the main issue stems from the landlord's intention to increase the rent payable from Kshs. 26,000.00 to Kshs. 55,000.00.
10. The landlord through his agents wrote a letter to the tenant dated 11th January 2023 informing them that they intended to increase the rent to the aforementioned Kshs. 55,000.00. in an attempt to prove the grounds for the raise the landlord issued the tenant with a valuation report which was carried out in November 2022.
11. From the report it indicated the rent payable as Kshs. 110,000.00. The landlord justifies this by claiming that there were substantive renovations and improvements done that raised the value of the property.
12. The tenant claims that the attempt to increase the rent by the landlord was arbitrary and should not be upheld.
13. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* chapter 301 Laws of Kenya Act at section 4(2) provides that:

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.
14. Section 4(4) further provides that:

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
15. In the case of *Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited*, Civil Appeal No. 203 of 1994 it was stated as follows;

“The Act lays down clearly and in detail, the procedure for the termination of a controlled tenancy. Section 4(1) of the Act states in very clear language that a controlled tenancy shall not 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 specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the tenant. The notice must also specify the ground upon which termination is sought. The prescribed notice in Form A also requires the landlord to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice.”



16. In this case the Landlord issued the tenant with a Notice to alter the terms of the tenancy by increasing the rent on January 11, 2023 which was to take effect from August 1, 2023. Based on the above provision, the said notice was to take effect after more than two months which is as per the Provisions of cap 301. As such the said notice can be deemed to be valid.
17. I find that the landlord was considerate enough to inform the tenant of their intention to increase the rent. They even went a step ahead and provided proof in the form of the report. The landlord explained that they would not enforce the terms of the report since some wards had not been in use previously but had now been made available.
18. In as much as the landlord did satisfy the requirements of giving the tenant prior notice before increasing the rent, it is my opinion that it would not be fair to increase the rent based only on the landlord's expert report.
19. As such I find it necessary to accord the tenant an opportunity to file their report as well after which the Tribunal will be able to make a determination as to whether the increase is justified.
20. I therefore proceed to order as follows;

Orders_

- a. The upshot is that the tenant's application dated January 30, 2023 is hereby partially allowed in the following terms;
- b. The tenant shall file a valuation report within 14 days showing the rent payable. The landlord can also respond and file any additional papers within 14 days as well.
- c. In the meantime, the tenant shall keep paying rent at the rate of Kshs. 40,500.00 as and when it falls due failure to which the landlord shall be at liberty to distress for rent.
- d. The matter shall be fixed for mention on October 3, 2023. MNTI
- e. Costs shall be in the Cause.

HON A. MUMA

AG CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON MUMA THIS 1ST DAY OF SEPTEMBER 2023

in the presence of Obiero holding brief for Sala for the Tenant and I the absence of the Landlord.

