



**Charles Gitau Mambo and Kelvin Mambo Gitau t/a Eastend Dental Clinic v Malde & others  
(Bros) (Tribunal Case E019 of 2023) [2023] KEBPRT 1214 (KLR) (Civ) (3 August 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1214 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E019 OF 2023  
CN MUGAMBI, CHAIR  
AUGUST 3, 2023**

**BETWEEN**

**CHARLES GITAU MAMBO AND KELVIN MAMBO GITAU T/A EASTEND  
DENTAL CLINIC ..... TENANT**

**AND**

**KIRAN MALDE AND OTHERS (BROS) ..... LANDLORD**

**RULING**

**Introduction**

1. The tenant's application dated 6.1.2023 seeks orders that the landlord be restrained from in any manner whatsoever interfering with the landlord's quiet possession and lawful enjoyment of the suit premises known as Shops RG O1 and 02 Ruiru Town-90 (hereinafter the suit premises), that the OCS Ruiru police station oversees compliance of the court orders and the usual prayer for an order for costs.

**The Tenant's depositions**

2. The tenant's affidavit in support of the application may be summarized as follows:-
  - a. That the tenants have been in occupation of the suit premises since the year 2003 and are currently paying a monthly rent of Kshs. 33,698/=.
  - b. That the tenants have leased two premises both leases expiring in the year 2024 and 2026 respectively.
  - c. That on 30.12.2022, the tenants received a letter dated 19.12.2022 notifying them to vacate the suit premises despite the fact that the tenants have paid their rent.



- d. That the Respondents have not given the tenants any reason why they should vacate the suit premises.
- e. That the tenants run a dental clinic at the suit premises and is their only source of livelihood.

### **The landlord's depositions**

- 3. The landlord's replying affidavit may be summarized as follows:-
  - a. That the Applicant is a stranger to the Respondents as the only tenancy the Respondent recognizes is that of Chariles Gitau Mambo with whom they entered into tenancy agreements vide letters dated 25.9.2019 and 5.1.2021.
  - b. That Charles Gitau Mambo is in fundamental breach of clause 13 and 14 of the lease agreement as he has sublet the suit premises to third parties and has therefore not approached the tribunal with clean hands.
  - c. That Charles Gitau has been a habitual rent defaulter which made it necessary for the Respondents to issue a termination notice to him- dated 16.5.2019.
  - d. That the Respondents have also issued demand notices to the said Charles Gitau Mambo to make good his rent default.
  - e. That the said Charles Gitau Mambo has been informed that the suit property has been sold and he has been required to clear outstanding rent arrears.
  - f. That Charles Gitau Mambo has been served with the notice to vacate dated 22.10.2022.
  - g. That the tenants failed to inform the court that the suit premises had already been sold.
  - h. That the Respondents are the registered legal proprietors with the freedom to deal with the suit premises as they wish.
  - i. That the property having been sold, the new beneficial owner stands to suffer adversely if any orders are given in favour of the Applicants.
  - j. That the application is not founded on a proper suit and hence fatally defective.

### **Analysis and Determination**

- 4. The only issue that arises for determination in this application is whether the tenants are entitled to the orders they have sought in this application.
- 5. I have perused the letters of offer to the tenants dated 25.9.2019 and 5.1.2021 and I am satisfied that the leases thereof (see clause 21) give rise to a controlled tenancy.
- 6. The tenants' complaint as can be seen from their affidavit in support of the application is that on 30.12.2022, they received a letter dated 19.12.2022 notifying them to vacate the suit premises while the tenancies they held for the suit premises lapse in the year 2024 and 2026 respectively. I have seen the letter dated 19.12.2022, it only seeks to remind the tenants of an earlier notice to vacate dated 22.10.2022 and which was to expire on 22.12.2022. The tenants should therefore have been more concerned with the notice to vacate issued by the Respondents and dated 22.10.2022.
- 7. I have also perused the notices dated 22.10.2022 annexed to the Respondents affidavit and marked as the Respondents exhibit "KM5". The notices notify the tenants that the suit premises have been sold and the tenants are to vacate by 30.11.2022 noting to pay all the outstanding bills.



8. Both notices complained of do not comply with the provisions of Section 4 of Cap 301 which requires that in order to terminate a controlled tenancy, the landlord must give the tenants the statutory notice in the prescribed form under that Section. The notices are to that extent invalid and of no consequence.
9. I have also noted that the Respondents have stated that they have sold the suit premises to a third party. The pleadings by the Respondents do not disclose the third party and I also do not think the mere sale of the suit premises, if any, took away the protection of the tenants under the provisions of the Act, Cap 301 of the Laws of Kenya.  
  
But, in any event, the Respondents have clearly at paragraph 21(g) of their replying affidavit deposed that they are the registered legal proprietors of the suit property and further at paragraph 22(b), the Respondents have deposed that the relationship between Charles Gitau Mambo and the Respondents is that of a tenant and a landlord.
10. Any attempt to terminate the tenancy between the parties herein has to strictly adhere with the termination clauses/provisions of Cap 301. It is my finding that the notices issued by the landlord to the tenant are invalid and of no legal consequence.
11. Consequently, I do find merit in the tenants' application and allow the same in terms of prayers 2, 3 and 4 thereof.
12. The complaint filed by the tenants has been determined by the above findings and the same is allowed in terms of the orders issued at paragraph 11 above.
13. The landlord will bear the costs of the application and the complaint assessed at Kshs. 30,000/=.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3<sup>RD</sup> DAY OF AUGUST 2023**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**3. 8.2023**

Delivered in the presence of;

Ms. Ruth Wangechi holding brief for Mrs. Onkaya for the Landlord

Mr. Patrobas Omwenga for Ms. Monyangi for the Tenants

