



**Macharia & another v Macharia (Tribunal Case E1176 of 2022)
[2023] KEBPRT 232 (KLR) (Civ) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 232 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E1176 OF 2022
A MUMA, VICE CHAIR
APRIL 27, 2023**

BETWEEN

FLORENCE MACHARIA 1ST APPLICANT

JANE WATARE GATAMAH 2ND APPLICANT

AND

JANE MARY MACHARIA RESPONDENT

RULING

A. PARTIES AND REPRESENTATIVES

1. The applicant Florence Macharia and Jane Watare Gatamah are the landlords and the owners of rented out space on the suit property Kasarani Ngumba Estate to the respondent, Jane Mary Macharia (hereinafter known as the ‘Tenant’)
2. The applicants are appearing in person.
3. The respondent Jane Mary Macharia is the Tenant of the suit property and rented space for business in the suit property.
4. The Respondent is appearing in person.

B. THE DISPUTE BACKGROUND

5. The Landlord and the tenant entered into a tenancy agreement for payment of monthly rent of Kenya Shillings Five Thousand Only (Ksh. 5,000).
6. The Landlords however issued a notice dated September 9, 2022 seeking to terminate tenancy on the grounds that they intended to renovate the suit premises.



7. The Tenant then opposed the same in BPRT E1128 of 2022 seeking orders restraining the Landlord from interfering with their quiet possession and occupation of the premises. The Tribunal directed that the Tenant should pay KShs. 15,000 before the hearing date which was on 12/1/2023 to the Landlord.
8. The Landlord moved this Honorable Tribunal vide a Notice of Motion under a Certificate of Urgency dated 10th December seeking orders that:
 - i. That the Application be certified as urgent and the same be dispensed with in the first instance.
 - ii. That this Honourable Tribunal be pleased to grant compelling the Respondent/ Tenant to pay her rent arrears of KShs. 30,000 within 7 days and that in default the Plaintiff/ Applicants be granted an order for leave to levy distress against the tenant's goods of trade to recover the outstanding arrears
 - iii. That this Honourable Tribunal be pleased to order for vacant possession forthwith on account of non-payment of rent.
 - iv. That the O.C.S Karani Police Station do ensure compliance of these orders
 - v. That the cost of the application be borne by the Defendant/ Tenant
 - vi. That the Honourable Tribunal do grant any other order it deems necessary.
9. The Tribunal through an Order dated December 15, 2022 ordered that the Tenant pays KShs. 15,000 before the hearing date on January 12, 2023.

THE LANDLORDS' CLAIM

10. It is the Landlords' case that the Tenant has continuously disregarded her obligations as a tenant by failing to pay the monthly rent of KShs. 5,000 from June 2022 to date.
11. They further aver that the tenant has always been problematic regarding the suit premises as she is always making promises to pay up the rent due without actually making payments.
12. In their supporting affidavit, the Landlords further aver that they issued a notice dated September 9, 2022 seeking to terminate the tenancy agreement on the grounds that they intended to rehabilitate and renovate the premises.
13. They further aver that the Tenant has been served with an eviction notice issued by the Tribunal but she has refused to vacate.
14. The Landlords also allege that the respondent has threatened her sister on several occasions, (1st applicant) and the same has adversely affected her health.

THE TENANT'S CLAIM

15. The respondent has filed a replying affidavit dated January 26, 2023 in response to the tenant's application averring that the Landlords misguided the Honourable Tribunal by stating that the respondent has not paid rent arrears of 6 months yet she only had 3 months' rent arrears due.
16. She further avers that the grounds on which the Landlords served her with a notice to terminate tenancy are not justifiable reasons to evict her as she has already renovated the premises.
17. The Tenant further indicated in her replying affidavit that she has filed her reference against the notice to terminate the tenancy agreement in BPRT No. E1128 of 2022. She avers that the Landlords is aware



of the pending suit yet they filed an application while the reference filed by the tenant is still pending determination.

List of issues for determination

18. The issues raised for determination are as follows;
- a. Whether the Notice to Terminate tenancy issued by the Landlord is legal and should be upheld?

Analysis and findings

- 19.
- Whether the Notice to Terminate tenancy issued by the Landlord is legal and should be upheld?**
- Section 4(2) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) which states as follows:
- 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.
20. Section 4 (4) further provides that
- No notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party and shall be specified therein.....
21. The tenant herein was served with a notice to terminate tenancy by the landlord on September 9, 2022 requiring that the tenant hand over vacant possession of the premises for renovation purposes. The notice was to effect on 1st of December 2022. To that extent, the notice is valid as it satisfies the minimum statutory required period of two months.
22. Section 4(5) of cap 301 requires that upon issuance of a notice to terminate tenancy the receiving party shall notify the requesting party in writing, within one month after the date of receipt of the notice, whether or not he agrees to comply with the notice
23. I take note of the fact that the notice was issued on September 9, 2022 and there is no evidence of a reference filed by the tenant opposing the same. The tenant did not file an application seeking to file the reference out of time neither did they request the Tribunal for extension of time within which to file the reference.
24. I therefore find that the notice issued is valid as there is no evidence of a reference opposing the notice to terminate the tenancy agreement.
25. I also note that the tenancy relationship between the Landlord and the Tenant has irretrievably broken-down owing to the tenant's conduct. The Applicants aver that the Tenant has continuously failed to pay rent as and when it becomes due as well as threatening the 1st applicant on several occasions. A careful perusal of the annexures filed by the Tenant shows that there was little or no payment of rent for the year 2022. In addition the tenant occupies space next to the landlords residential place and as such it is not tenable to continue with the same in light of the averments at the oral hearing.
26. In light of the foregoing, I find that the notice issued by the landlord is valid and reasons being rent default which the tenant concedes to though she says its 3 months not 6 months but even 3 months



default is quite detrimental to an elderly sick landlord who sister has to aide her appear in court, further more she pays rent in the morning of court when ordered to do so. In addition the verbal threats and close proximity to the landlords residents makes this relationship just not tenable anymore and has to end.

C. ORDERS

- a. The upshot is that the Landlords' application is upheld.
- b. The notice issued by the Landlord dated September 9, 2022 is hereby declared valid.
- c. The tenant shall hand over vacant possession to the landlords on or before April 30, 2023.
- d. Each party shall bear their own Costs.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 27TH DAY OF APRIL 2023 IN THE PRESENCE OF JANE MACHARIA THE TENANT AND FLORENCE MACHARIA THE LANDLORD.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

