



**Osenya v Ote Stores Limited & 3 others (Tribunal Case E036 of 2023)  
[2024] KEBPRT 700 (KLR) (Civ) (24 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 700 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E036 OF 2023  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
MAY 24, 2024**

**BETWEEN**

**FRANCIS ERIC OSENYA ..... APPLICANT**

**AND**

**OTE STORES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**GEORGE O. ATINGA ..... 2<sup>ND</sup> RESPONDENT**

**PAMELA AMIMO ..... 3<sup>RD</sup> RESPONDENT**

**SAMWEL ONJOLO ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The Tenant herein moved this Tribunal through a reference dated May 30, 2023 under Section 12(4) of Cap. 301, Laws of Kenya complaining that he had been threatened with eviction by the Respondents using goons and that they had refused to accept rent from him.
2. The Tenant simultaneously filed a motion of even date seeking for orders;
  - I. That the application be certified urgent and the same be heard ex-parte in the first instance.
  - II. That the Respondents be ordered to accept the monthly rent immediately and unconditionally and in default, the Tenant to deposit the monthly rent in the Tribunal's Account at the Respondents' costs pending hearing of the application Inter-partes.
  - III. That the Respondents be ordered to allow the Tenant un-limited access to the business premises without hindrance pending hearing and determination of the case.



- IV. That the landlord, its servants, employees, Caretaker, agents be restrained forthwith from unlawfully intercepting, harassing, intimidating and/or closing, evicting or threatening, interfering, tampering, increasing rent, demolishing, disconnecting electricity power and water supply, disposing by or in any manner whatsoever and or howsoever with the Applicant's quiet occupation and lawful enjoyment of the suit premises on Plot No.10/734 pending hearing and determination of the case.
- V. That the O.C.S Central Police Station, Kisumu assists in compliance with the orders.
- VI. That costs of the application be provided for.
3. The application is premised on the annexed affidavit of the Tenant and the following grounds;
- The Tenant stood at the risk of losing his business and tools of trade due to the Respondents' interference.
  - The Respondents' act of threatening the Tenant with eviction using hired goons and refusing to accept the monthly rent was occasioning untold hardship to the Applicant and his clientele.
  - The Respondents' threats of eviction would cripple the Tenant's business operations.
  - The Respondents' action was illegal and contrary to the provisions of Cap. 301, Laws of Kenya.
  - The Applicant is a protected Tenant who must be protected by the honorable court from illegal activities of the Respondents.
4. In his supporting affidavit sworn on 30<sup>th</sup> May 2023, the Tenant reiterates the aforesaid grounds in support of the application and deposes that he has been running his business in the 1<sup>st</sup> Respondent's business premises on Plot No.10/734 paying a monthly rent of Kshs.45,000. He further deposes that he signed a tenancy contract with one Mr. George Atinga of OTE STORES LIMITED on 1<sup>st</sup> March 2023 on behalf of the landlady (Pamela Amimo) for a three year's period. A Copy of the tenancy agreement is attached to the affidavit.
5. The 3<sup>rd</sup> & 4<sup>th</sup> Respondents are accused of issuing threats of eviction against the Tenant while the 1<sup>st</sup> Respondent is said to hold a one month's rent deposit of Kshs.45,000.
6. The Respondents are said to have refused to accept the monthly rent with intention to evict the Tenant. The Tenant was directed by the Agent (Mr.Atinga) to pay the rent directly to the landlady which he did through Mpesa and the landlady acknowledged. On the third month, the landlady sent a message threatening to evict the Tenant merely because of the fact that he is a member of the United Democratic Party (UDA) where he serves as the Chairman of Kisumu County. The landlady together with her partner one Mr. Samuel Onjolo are accused of threatening to evict the Tenant from the premises using hired goons.
7. The Tenant deposes that he has incurred serious losses as a result of the malicious actions of the Respondents. On the weekend of 20<sup>th</sup>/21<sup>st</sup>, they hired goons who vandalized the Tenant's tools of trade at night when he was not there causing a lot of destruction. The Tenant further deposes that he suspects the 3<sup>rd</sup> and 4<sup>th</sup> Respondents who had threatened earlier to do so. The said vandalism was reported at the Central Police Station, Kisumu under OB number 42/24/5/23 at 1207 Hours. A copy of the report is attached.
8. In his replying affidavit sworn on 21<sup>st</sup> February 2024 in opposition to the application, the 4<sup>th</sup> Respondent deposes that he is the registered owner of the suit property known as Plot No.10/734.



The said premises were all along let to one George O. Atunga who traded as Ote Stores. It is therefore unknown to the 4<sup>th</sup> Respondent how and when the Applicant became a Tenant in the premises.

9. The 4<sup>th</sup> Respondent states that when he visited the premises in May 2023 before the property was razed down, it appeared that many people were occupying parts of the premises. He did not know that they were not part and parcel of the Tenant with whom he had entered into a lease agreement.
10. Sometimes in May 2023, someone who knew him as the owner of the property called to enquire why he allowed his premises to be used by UDA party at the heat of political turmoil in an area where the opposing party was the majority party. He first thought that the man was mistaken because he had no known relationship with UDA either personally or through tenancy.
11. The 4<sup>th</sup> Respondent became sensitive since demonstrations had been scheduled to take place countrywide following the march called by Azimio Party. He quickly drove to Kisumu and proceeded right into the premises and was shocked when he found the whole of the premises and compound painted with UDA colours. This was on a Wednesday and since demonstrations were to be held on Thursday, he had no alternative but to run to the police to make special arrangement to protect the property since the demonstrators would attempt to attack anything UDA. The police made arrangement and told him that they would put special arrangement in place to protect the property.
12. On the very day before the said Thursday, the 4<sup>th</sup> Respondent went back to the premises to establish who let the property to UDA or how they came into the property. He found UDA party stalwarts addressing a Baraza in the compound led by Cleophas Malala who is one of the leaders of UDA. He was unable to talk to the UDA Party leaders owing to the political tension in the meeting.
13. The following day, there were demonstrations and despite the 4<sup>th</sup> Respondent asking the police to ensure that the property is protected they were overwhelmed and the property was burnt and several vehicles parked therein were also burnt down.
14. On the following day, the 4<sup>th</sup> Respondent visited the property and found nobody there with everything having been removed save for the burnt down properties that were useless. He mobilized and secured the property and started rebuilding it. His Tenant was not available and everyone had moved and the property was totally vacant having been razed down. It took him three months to undertake the repairs and to put in new things as he looked for new Tenants.
15. However, one morning, his security called and asked him to urgently go to the premises and on arrival found all the doors and locks broken into and someone identified as Francis Eric Osenya occupying the premises and put up a UDA sign.
16. According to the 4<sup>th</sup> Respondent, he has never entered into any agreement with said Francis Eric Osenya who opened UDA offices in the suit premises neither did he pay rent to him. As such, he accuses the Applicant of being an intruder and a person who has maliciously damaged his property. He terms his presence in the suit property as illegal and unknown to UDA party because after the premises was razed down, the 4<sup>th</sup> Respondent went to Malala's office in Nairobi and he was told that they did not have offices and they run everything from the Secretariat and individual officials operated from their homes.
17. On 29<sup>th</sup> February 2024, the Tenant was granted 14 days to file a further affidavit and submissions which was not done. As a result, the Respondents did not file submissions despite seeking a further 14 days on 8<sup>th</sup> April 2024 to do so.
18. We are therefore required to determine the following issues;



- a. Whether there exists a controlled tenancy between the Applicant and the Respondents to warrant protection by this Tribunal.
  - b. Whether the Applicant is entitled to the reliefs sought in the reference and application dated 30<sup>th</sup> May 2023.
  - c. Who is liable to pay costs of the suit?
19. The Tenant's case is that he has been running his business in the 1<sup>st</sup> Respondent's business premises on Plot No.10/734 paying a monthly rent of Kshs.45,000. He further deposes that he signed a tenancy contract with one Mr. George Atinga of OTE STORES LIMITED on 1<sup>st</sup> March 2023 on behalf of the landlady (Pamela Amimo) for a three year's period. A Copy of the tenancy agreement is attached to the affidavit.
  20. The 3<sup>rd</sup> & 4<sup>th</sup> Respondents are accused of issuing threats of eviction against the Tenant while the 1<sup>st</sup> Respondent is said to hold a one month's rent deposit of Kshs.45,000.
  21. The Respondents are said to have refused the monthly rent with intention to evict the Tenant. The Tenant was directed by the Agent (Mr.Atinga) to pay the rent directly to the landlady which he did through Mpesa and the landlady acknowledged. On the third month, the landlady sent a message threatening to evict the Tenant merely because of the fact that he is a member of the United Democratic Party (UDA) where he serves as the Chairman of Kisumu County. The landlady together with her partner one Mr. Samuel Onjolo are accused of threatening to evict the Tenant from the premises using hired goons.
  22. The Tenant deposes that he has incurred serious losses as a result of the malicious actions of the Respondents. On the weekend of 20<sup>th</sup>/21<sup>st</sup>, they hired goons who vandalized the Tenant's tools of trade at night when he was not there causing a lot of destruction. The Tenant further deposes that he suspected the 3<sup>rd</sup> and 4<sup>th</sup> Respondents who had threatened earlier to do so. The said vandalism was reported at the Central Police Station, Kisumu under OB number 42/24/5/23 at 1207 Hours. A copy of the report is attached.
  23. In his replying affidavit sworn on 21<sup>st</sup> February 2024 in opposition to the application, the 4<sup>th</sup> Respondent deposes that he is the registered owner of the suit property known as Plot No.10/734. The said premises were all along let to one George O. Atunga who traded as OTE STORES. It is therefore unknown to the 4<sup>th</sup> Respondent how and when the Applicant became a Tenant in the premises.
  24. The 4<sup>th</sup> Respondent states that when he visited the premises in May 2023 before the property was razed down, it appeared that many people were occupying parts of the premises. He did not know that they were not part and parcel of the Tenant with whom he had entered into a lease agreement.
  25. Sometimes in May 2023, someone who knows him as the owner of the property called to enquire why he allowed his premises to be used by UDA party at the heat of political turmoil in an area where the opposing party was the majority party. He first thought that the man was mistaken because he had no known relationship with UDA either personally or through tenancy.
  26. The 4<sup>th</sup> Respondent became sensitive since demonstrations had been scheduled to take place countrywide following the march called by Azimio Party. He quickly drove to Kisumu and proceeded right into the premises and was shocked to find the whole premises and compound painted with UDA colours. This was on a Wednesday and since demonstrations were to be held on Thursday, he had no alternative but to run to the police to make special arrangements for protection of the property since he



- feared that the demonstrators would attempt to attack anything UDA. The police made arrangement and told him that they would put special arrangements in place to protect the property.
27. On the very date before the said Thursday, the 4<sup>th</sup> Respondent went back to the premises to establish who let the property to UDA or how they came into the property. He found UDA party stalwarts addressing a Baraza in the compound led by Cleophas Malala who is one of the leaders of UDA. He was unable to talk to the UDA Party leaders owing to the political tension at the meeting.
  28. The following day, there were demonstrations and despite the 4<sup>th</sup> Respondent asking the police to ensure that the property is protected, they were overwhelmed and the property was burnt down and several vehicles parked therein were also burnt.
  29. On the following day, the 4<sup>th</sup> Respondent visited the property and found nobody there with everything having been removed save for the burnt down properties that were useless. He mobilized and secured the property and started rebuilding it. His Tenant was not available anywhere and everyone had moved out and the property was totally vacant having been razed down. It took him three months to undertake the repairs and to put in new things as he looked for new Tenants.
  30. However, one morning, his security called and asked him to urgently go to the premises and on arrival found all the doors and locks broken into and someone identified as Francis Eric Osenya occupying the premises and having put up a UDA sign.
  31. According to the 4<sup>th</sup> Respondent, he has never entered into any agreement with the said Francis Eric Osenya who opened UDA offices in the suit premises neither does he pay rent to him. As such, he accuses the Applicant of being an intruder and a person who maliciously damaged his property. His presence in the suit property is termed as illegal and unknown to UDA as a party because after the premises was razed down, the 4<sup>th</sup> Respondent went to Malala's office in Nairobi and he was told that they did not have offices but run everything from the Secretariat and individual officials operated from their homes.
  32. It is against the said background that we have been called upon to determine whether there exists a controlled tenancy between the Applicant and the Respondents to warrant protection by this Tribunal.
  33. The Applicant annexed a tenancy agreement entered on 1<sup>st</sup> March 2023 between him (as tenant) and Otes Stores Limited (as landlord) in respect of the suit premises for a period of three (3) years. The same is duly executed by both parties in the presence of a witness.
  34. It is curious that the 4<sup>th</sup> Respondent is very silent in his replying affidavit over the said tenancy agreement despite admitting that he had let the premises to one George O. Atunga who signed the agreement relied upon by the Tenant as the Landlord on behalf of Ote Stores Limited. It is therefore apparent from the materials placed before us that the Applicant is a subtenant of the said Otes Stores Limited. His tenancy can only therefore be terminated through issuance of a tenancy notice under Section 4(2) of Cap. 301, Laws of Kenya.
  35. Section 4(2) of the said statute provides as follows;
    - “(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”.



36. Section 5 of the said statute provides as follows;

“ 5. Effect on sub-tenancies;

- (1) Where a landlord is himself a tenant, the termination of the landlord’s tenancy shall not of itself terminate a controlled sub-tenancy, but for the purposes of this Act the person entitled to the interest in reversion expectant on the termination of the landlord’s tenancy shall be deemed to be the landlord of the controlled sub-tenancy upon the terms and conditions thereof and subject to the provisions of this Act.
- (2) Where a landlord gives a tenancy notice to his tenant, he may at the same time give a similar notice to any person to whom the tenant has sub-let the whole or any part of the premises concerned and thereupon the provisions of this Act shall apply to the sub-tenant, and his sub-tenancy, as if he were the tenant of such landlord.
- (3) Where a landlord, in accordance with the provisions of subsection (2) of this section serves notices on both the tenant and the sub-tenant, the Tribunal may consolidate any references made to it by the tenant and the sub-tenant, and may hear them simultaneously and may make such orders concerning the tenant and the sub-tenant as may be necessary.

37. We note that the 4<sup>th</sup> Respondent has not alluded to any termination of his tenancy with the 1<sup>st</sup> Respondent and even if he was to do so, the same cannot terminate the sub-tenancy relationship entered into between the 1<sup>st</sup> Respondent and the Applicant in view of the aforesaid provisions of Section 5 of Cap. 301. We therefore find and hold that there exists a controlled tenancy between the Applicant and the 1<sup>st</sup> and 4<sup>th</sup> Respondents.

38. The second issue is whether the Applicant is entitled to the reliefs sought in the reference and application dated May 30, 2023. In view of the observations made in regard to issue (a) above, the Applicant is clearly entitled to the reliefs sought as failure to do grant the same will only expose him to illegal eviction.

39. This Tribunal was established to protect controlled tenants from eviction and exploitation. It will be an abdication of duty if we were to shy away from protecting the Tenant from the alleged threats of eviction from the suit property. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not file any responses to the Tenant’s case and the same therefore remains unopposed as against them. There is no basis therefore upon which we can deny the Tenant the reliefs sought.

40. Costs of every action before this Tribunal are at our discretion under Section 12(1)(k) but always follow the event unless for good reasons otherwise ordered. We have no reason to deny costs to the Applicant being the successful party. The said costs shall be payable by the 4<sup>th</sup> Respondent being the only one who opposed the case.

41. As the reference raises the same issues as the application, this ruling shall apply to both under Section 12(4) of Cap. 301, Laws of Kenya.

42. In conclusion, the following final orders commend to us in this matter;



- a. The Respondents be and are hereby ordered to immediately and unconditionally accept monthly rent in respect of the suit premises from the Tenant and in default, the Tenant is authorized to deposit the rent in the Tribunal's Account at the Respondents' costs.
- b. The Respondents be and are hereby ordered to allow the Tenant un-limited access to the business premises without any hindrance.
- c. The landlords, their servants, employees, caretakers and agents be and are hereby restrained from unlawfully intercepting, harassing, intimidating and/or closing, evicting or threatening, interfering, tampering, increasing rent, demolishing, disconnecting electricity power and water supply, disposing by or in any manner whatsoever and or howsoever interfering with the applicant's quiet occupation and lawful enjoyment of the suit premises on Plot No.10/734 without adhering to the provisions of Cap. 301, Laws of Kenya.
- d. The O.C.S Central Police Station, Kisumu shall assist in ensuring compliance with these order
- e. Costs of the application and reference assessed at **Kshs 25,000/=** are awarded to the Tenant/ Applicant against the 4<sup>th</sup> Respondent.

It is so ordered.

**HON. GAKUHI CHEGE - PANEL CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON GAKUHI CHEGE THIS 24TH DAY OF MAY,2024 IN THE ABSENCE OF THE PARTIES.**

**HON. GAKUHI CHEGE - PANEL CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON. JOYCE A OSODO - PANEL MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

