



**Migwi v Wanjala (Tribunal Case E016 of 2023)
[2023] KEBPRT 642 (KLR) (26 October 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 642 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E016 OF 2023
A MUMA, AG. CHAIR
OCTOBER 26, 2023**

BETWEEN

PAUL KAMAU MIGWI APPLICANT

AND

MARGARET SABINA WANJALA RESPONDENT

JUDGMENT

A. Parties & Their Representatives

1. The applicant, Paul Kamau Migwi Gathosi (hereinafter “the tenant”) is the tenant of the rented business space at a property known as LR No Kitale Municipality Block 21XX/28/V.
2. The firm of M/S Nasike Wafula & Associates Advocates represents the tenant/applicant.
3. The Respondent Margaret Sabina Wanjala is the Landlord of a rented business space situate at Property known as LR No Kitale Municipality Block 21XX/28/V.
4. The firm of M/S R.E Nyamu & Company Advocates represents the Landlady/Respondent.

B. Dispute Background

5. On May 26, 2023, this honorable Tribunal delivered a ruling on Tenant’s Application dated January 20, 2023. In the said ruling, the Court made a determination that the landlady’s notice of termination dated December 21, 2022 was valid for the reason that it met the legal threshold required under section 4 (4) of [cap 301](#).
6. The Court however was not in a position to determine whether the said notice of termination was valid as there was a dispute as to the existence of arrears for a period of over two months.
7. Consequently, the Court ordered that the tenant resume paying rent from June 1, 2023 at the agreed rate of KShs 50,000.00, that parties prepare updated statements of account showing the rent



arrears claimed within 14 days, that the tenant to provide a statement showing the costs incurred for renovations to which the tenant is to respond within 14 days and that the reference be fixed for hearing on July 10, 2023.

8. Pursuant to this ruling, the landlord filed a further Affidavit dated July 24, 2023 having annexed her bank statements of the period between May 5, 2020 and June 27, 2023.
9. When the matter came up for hearing on September 6, 2023, the Court directed that the Tenant resupplies his bundle to the Court. However, the same was not done.

C. Claim And Defence

10. The landlady depones in her Replying Affidavit that that the tenant has continually defaulted in paying rent and has shown no commitment to pay the outstanding arrears.
11. She indicates that the payment of Kshs 616,000.00 made into her account by the tenant on March 3, 2021 was not his rent, but rent collected on behalf of other tenants, the tenant having held himself out as her agent.
12. Further, the landlady states that she does not owe the tenant any monies for renovation as he had not done any renovations on the property and that the suit premises was in a good condition when he took possession.
13. There is no response to these averments by the tenant. Additionally, there are no statements showing the costs incurred for renovations.

D. Issues For Determination

14. I have carefully analyzed all the Pleadings filed and the relevant evidence adduced before honorable Court. I considerably find that the issue that falls for determination is:
 - i. Whether the tenant is in rent arrears and if so, whether the arrears constitute a sufficient ground to terminate the tenancy

E. Analysis Of The Law

Whether the Tenant is in rent arrears and if so, whether the arrears constitute a sufficient ground to terminate the tenancy

15. I have taken time to peruse the landlady's bank statements and I confirm that in the year 2022, the tenant paid rent for the months of January, May, July and August and defaulted on the rest of the months and had not made any payments as at July 1, 2023 when the said statements were obtained.
16. I note that since there are no documents before this Court to substantiate the agreement to renovate the premises as alluded to by the tenant, the Court cannot determine the amount alleged to have been incurred.
17. Although the landlady has not provided proof of non-existence of an agency relationship, this Court is convinced, on a balance of probabilities, that the amount of KShs 616,000.00 as deposited by the tenant is not part of his rent. This is for the reason that the tenant continued to pay rent for the months of May, July, September 2021 and the aforementioned months of 2022.
18. Besides, if the same would have been deducted as rent, it would have covered rent for 12 months. Therefore, the tenant would still be obligated to pay rent from the February 2023.



19. Having analyzed the said statements, this Court finds that the tenant is in rent arrears since September 2022 to date. The said arrears have accumulated to the tune of Kshs 700,000.
20. In the circumstances, the ground upon which the landlady issued the notice of termination is sufficient and meets the legal threshold required of a landlord seeking to terminate a tenancy under section 7 (1) (b) of [Cap 301](#).

F. Determination

21. The upshot is that the tenants' reference is hereby dismissed in the following terms:
 - a. The tenant to surrender vacant possession to the landlady within 30 days.
 - b. Tenant to pay arrears of Kshs 700,000.00 within 30 days failure to which the Landlady is at liberty to break in and take over vacant possession.
 - c. OCS Kitale Police Station to assist in compliance.
 - d. Each party to bear its own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. MUMA THIS 26TH DAY OF OCTOBER 2023 IN THE PRESENCE OF IMAINATA H/B FOR NYAMU FOR THE LANDLORD. NO APPEARANCE FOR THE TENANT.

HON A. MUMA

AG CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

