



**Shikanga v Opiyo (Tribunal Case E030 of 2021)
[2023] KEBPRT 233 (KLR) (Civ) (12 April 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 233 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E030 OF 2021
A MUMA, VICE CHAIR
APRIL 12, 2023**

BETWEEN

KEVIN MUHATI SHIKANGA TENANT

AND

FREDRICK OPIYO LANDLORD

RULING

A. Parties And Representatives

1. The applicant Kelvin Mohati Shikanga is the tenant and rented space on the suit property. (hereinafter known as the ‘tenant’)
2. The firm of Wasuna & Co Advocates represent the applicant/tenant in this matter.
3. The respondent is the landlord and the owner of the suit property and rented out space to the tenant. (hereinafter known as the ‘landlord’)
4. The firm of KN Wesutsa& Co Advocates represent the Landlord/Respondent in this matter.

B. The Dispute Background

5. The Landlord issued the tenant with a notice to terminate tenancy dated November 9, 2021. The notice was to take effect after 90 days and was issued on the grounds that the landlord intended to setup their own private investment on the premises.
6. In opposition to the notice, the Tenant has filed a Reference dated November 25, 2021 under section 12 (4) of the [Landlords and Tenants \(Shops, Hotels and Catering\) Establishments Act](#) Cap 301.



7. The matter came up for hearing before the Tribunal on December 9, 2022 where the reference was dismissed for want of prosecution and the landlord was granted the liberty to execute the notice and acquire vacant possession.
8. The tenant has since filed an application dated December 19, 2022 seeking to have the reference reinstated.

C. The Tenant's Claim

9. The Tenant/Applicant filed a Reference dated November 25, 2021 which was dismissed for want of prosecution.
10. The tenant has filed the present application before the Tribunal dated December 19, 2021 seeking to have the reference reinstated.

D. The Landlord/respondent's Claim

11. The Landlord/Respondent has filed a replying affidavit dated February 16, 2023 in opposition to the tenant's application.

E. List of Issues For Determination

12. The issues raised for determination are as follows;
 - a. Whether the Tenant's application for reinstatement of the reference is merited?

F. Analysis And Findings

Whether the Tenant's application for reinstatement of the reference is merited?

13. The tenant approached this tribunal by way of the reference dated November 25, 2021. The same was filed in opposition to the notice issued by the landlord dated November 9, 2021.
14. The matter came up for hearing on December 9, 2022. In the said session, only the landlord was present and as such the reference was dismissed for want of prosecution and the landlord was granted the liberty to evict the tenant and take back vacant possession of the premises.
15. The tenant claims that on the date the matter came up for hearing, they were out of the country on work engagements and as such could not log in to court. They have also stated that they had made prior communication to the Tribunal registry informing them that the date was not convenient to them.
16. It is my observation that the tenant in filing the reference and opposing the notice adhered to the requirements of Section 4(5) of cap 301. It requires that upon receipt of a notice to terminate tenancy, the receiving party is expected to communicate within one month to the landlord of their intention or lack thereof to comply with the said notice.
17. The tenant adhered to this since the notice was dated November 9, 2021 and the reference was filed on November 25, 2021.
18. Seeing as the tenant had followed due procedure in filing the suit before the Tribunal and that they were unable to log in during the hearing, I am persuaded to reinstate the reference and accord the tenant a chance to prosecute the same.



19. I am also guided by the provisions of Article 50(1) of the Constitution of Kenya which provides that;

Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

20. In light of the foregoing, I therefore proceed to order as follows;

G. Orders

- a. The upshot is that the Tenant's Application dated December 19, 2021 is hereby allowed in the following terms;
- b. The orders of this Tribunal issued on December 9, 2022 are hereby set aside.
- c. The Tenant's Reference dated November 25, 2021 is hereby reinstated.
- d. Tenant to enjoy quiet possession of the premises and to pay rent as agreed.
- e. Parties shall exchange the necessary documents in 14 days each. The Landlord shall commence.
- f. The Reference shall be fixed for hearing on May 30, 2023.
- g. The tenant shall pay thrown away costs to the landlord assessed at Kshs 10,000.00

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 12TH DAY OF APRIL 2023 IN THE ABSENCE OF THE TENANT AND OKELLO FOR THE LANDLORD.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

