



**Njunu v Wahome (Tribunal Case E081 of 2024)
[2024] KEBPRT 1327 (KLR) (12 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1327 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E081 OF 2024
CN MUGAMBI, CHAIR
AUGUST 12, 2024**

BETWEEN

JOPSEPH NJUNU TENANT

AND

EDWARD WAHOME LANDLORD

RULING

Introduction

1. The Tenant's Application dated 18.03.2024 seeks an order restraining the Landlord from in any way whatsoever interfering with the Tenant's enjoyment of his tenancy in the demised premises, an order that the termination notice dated 23.2.2024 is defective, unlawful and void, police assistance and costs of the suit.

The Tenant's depositions

2. The Tenant's affidavit sworn on 18.3.2024 in support of his Application may be summarized as follows;-
 - a. That the Respondent has issued the Tenant with a defective termination notice dated 23.2.2024.
 - b. That the Landlord is using the notice to harass the Tenant and to also threaten the subtenants.
 - c. That the Tenant took over the premises in 2008 on the understanding that he would partition the premises into small compartments and place the Tenants therein at a profit.
 - d. That at the time the Tenant took possession of the premises in 2008, the suit premises was under the management of the Respondents falter.



- e. That the Respondent who took over the management of the premises in 2019 drafted an agreement which the Tenant considered oppressive and thereafter declined to execute the same.
- f. That the grounds upon which the notice is premised are fabricated as the Tenant had paid rent for one month in advance and therefore had no rent arrears.
- g. That the Landlord has not issued the Tenant with receipts for rent paid.
- h. That the Tenant has invested heavily in the suit premises by partitioning the same and giving it its current value.

The Respondent's depositions

3. The replying affidavit sworn by the Respondent on 17.5.2024 may be summarized as follows;-
 - a. That until September, 2020 the Tenant of the suit premises was Dalmas Ikwabe and the Applicant expressed interest in the suit premises in October 2020.
 - b. That the suit premises were partitioned by the former Tenant and not the Applicant.
 - c. That the former Tenant bartered the partitioning in exchange for rent arrears of Kshs. 230,000/=.
 - d. That the Tenant/Applicant does not offer services or trade in a shop, hotel or catering establishment and is therefore not a protected Tenant and consequently, the Tribunal has no jurisdiction to hear and determine this matter.
 - e. That the Tenant has declined to sign a lease for the premises and has further not paid rent for April and May 2024 and the water bill for the premises.
 - f. That the Applicant pays rent as and when he pleases and often late.

The Tenant's Supplementary depositions

4. The Tenant's Supplementary affidavit sworn on 17.6.2024 may be summarized as follows;-
 - a. That the Tenant has been in the suit premises since 2008, between 2008-2011, the Tenant and the agent one Mr. Andrew Kasoso occupied shop No. 4 but the Tenant moved to shop No. 1 later.
 - b. That Mr. Francis Wahome gave the Tenant permission to make changes on the sop where the Tenant removed the small window and installed a sliding door, the said Francis Wahome also allowed the Tenant to install his own KPLC meter which is still at the premises.
 - c. That the Tenant runs a business at stall No. 3 in the suit premises by the name Rontech Solutions where he offers 17 solutions and graphic designs.
 - d. That the Tenant's problems began when the Respondents/Tenants started moving out of the Respondent's premises to the Tenant's premises.
 - e. That when Kasoso vacated the suit premises, the Tenant herein took up the space occupied by the said Kasoso in addition to the space the Tenant was already occupying.

Analysis and determination

5. The issues that arise for determination in the above Application are in my view the following;-



- a. Whether the Tribunal has the jurisdiction to hear and determine this Application.
- b. Whether the Tenant is entitled to the orders sought in his Application.

Issue A: Whether the Tribunal has the jurisdiction to hear and determine this Application.

6. The basis of the Landlord's challenge to the jurisdiction of the Tribunal is to be found at paragraphs 13 and 14 of the Landlord's affidavit where it is deponed as follows:-
 - 13 -The Applicant does not provide services or trade in a shop, hotel or catering establishment on the subject premises.
 - 14 -My Advocates advise me and I verily believe that the Applicant is not a protected tenant and therefore the Honourable Tribunal lacks the jurisdiction to determine this matter.
7. In considering the depositions at paragraphs 13 and 14 above, the Tenant at paragraphs 3, 4 and 6 of his Supplementary affidavit has deponed as follows:-
 - 3 -That in 2013, the agent was Mr. Andrew Kasoso and I both Tenant (sic) in Shop No. 4 from year 2008-2011 when I moved to Shop No. 1.
 - 4 -That Mr. Francis Wahome gave me permission to make changes on the shop where I removed the small window and installed a sliding door.
 - 6 -That I run a business by name Entech Solutions in the same premises (Stall No. 3) where we offer IT Solutions and graphic design.
8. Although no written agreement has been exhibited, it is clear that the Applicant is a Tenant of the Respondent. The contents by the Landlord that the Tenant does not offer services and that he is not in the suit premises cannot hold as the Tenant has clearly indicated that he runs a business in the suit premises at Stall No. 3. It is also contested whether or not it is the Applicant who partitioned the premises as the Landlord depones that the same were done by a previous Tenant and the Applicant herein did not purchase the same. From the affidavits, it is also clear that the Applicant has subtenants in the suit premises who according to the Applicant are the cause of the friction between the parties. The Landlord in this event was required by the law to issue the notices to vacate to the subtenants in line with Section 5(2) of Cap 30 which provides as follows:-

“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 sublet the whole or any part of the premises concerned and thereupon the provisions of this Act shall apply to the subtenant and his subtenancy, as if he were the tenant of such Landlord.”
9. Section 5(2) of Cap 301 above recognizes that a Tenant may sublet the whole or any part of the premises. In effect, this would therefore mean that a Tenant does not have to be in possession of the premises to quantify as a protected tenant, he can sublet wholly or in part occupy wholly or in part, and the provisions of Cap 301 will still apply.
10. I have also read the notice to vacate rental premises at Posta building Mtwapa dated 23.2.2024. The notice in its introductory paragraph states as follows:-

“I hereby give you notice of intent to terminate your tenancy agreement with you by 31st March 2024 and vacate the premises not later than 5th of April 2024. The reasons for your termination are...”



The Landlord clearly recognizes the Applicant as his Tenant. The parties do not have a written lease agreement and further the fact that the Tenant has sublet the premises does not change the legal status of his tenancy which in my view is a controlled tenancy as per the meaning ascribed to controlled tenancies under Section 2(1)(9) of Cap 301 of the Laws of Kenya.

11. On this issue, I do find that the Tenant/Applicant is the Tenant of the Landlord, their relationship is that of a controlled tenancy, the Tenant a protected Tenant and the Tribunal has the jurisdiction to hear and determine this matter.

Issue B: Whether the Tenant is entitled to the orders sought in his Application.

12. The notice to terminate tenancy subject matter of this dispute is the one dated 23.2.2024. The relationship between the parties being that of a controlled tenancy, the Landlord desirous of terminating the tenancy is required under Section 4(2) of Cap 301, to issue a statutory notice in the prescribed form. I have perused the notice dated 23.2.2024 and the same is not issued pursuant to the provisions of Section 4(2) 4(4) and 4(5) of Cap 301. The notice is therefore invalid, illegal and of no consequence. In this case, I do find merit in the Tenant's argument and Complaint and the notice issued to him is illegal and invalid.

Disposition

13. In view of the above findings, I do find merit in the Tenant's Application dated 18.3.2024 and proceed to allow the same as prayed.
14. I have also perused the Complaint filed by the Tenant. It raises the same issues raised in the Application and no useful purpose will be served in hearing the Complaint. Consequently, the Tenant's Complaint is also allowed in terms of prayers (i), (ii), (iii) and (iv) thereof.
15. This file is ordered closed under Section 12(4) of Cap 301.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF AUGUST, 2024

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Ms. Kahoya for the Respondent and Mr. Macharia for the Tenant

