



**Kungu v Njoki & another (Tribunal Case E1229 of 2023)
[2024] KEBPRT 295 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 295 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1229 OF 2023
A MUMA, AG. CHAIR & J ROP, MEMBER
MARCH 13, 2024**

BETWEEN

STEPHEN KAVINDU KUNGU APPLICANT

AND

PAULINE NJOKI 1ST RESPONDENT

JOSEPH KARIUKI 2ND RESPONDENT

RULING

A. Parties and Representatives

1. The applicant, Stephen Kavindu Kungu is a Tenant of a space in a business premises located at Mlango Kubwa (the “Tenant”).
2. The Tenant appears in person.
3. The 1st Respondent, Pauline Njoki, is the owner of the suit premises and hence the Landlord. (the “Landlord”).
4. The Landlord appears in person.
5. The 2nd Respondent, Joseph Kariuki, is the manager of the suit premises and hence an agent of the Landlord.

B. The Dispute Background

6. The Tenant moved this Tribunal *vide* a Reference and an Application dated 5th December 2023 seeking Orders certifying the matter as urgent, compelling the Respondents to accept monthly rent, restraining the Landlords, its servants, agents and employees from unlawfully evicting, demolishing, or interfering with the Tenant’s quiet enjoyment of the suit premises.



7. Having considered the Tenant's Application, this Honorable tribunal issued Orders dated 7th December 2023 restraining the Respondents from unlawfully evicting, demolishing, or interfering with the Tenant's quiet enjoyment of the suit premises pending the hearing and determination of this matter and set the reference for hearing on 27th December 2023.
8. On 5th February 2024, the Court dismissed the matter for want of prosecution and directed that the Landlord has liberty to evict the tenant immediately and let the suit premises to another person.
9. Subsequently, the Tenant filed an Application dated 7th February 2024 seeking to reinstate the matter and to stay the Orders of the Court issued on 5th February 2024, which was allowed on 22nd February 2024.
10. It is the Tenant's Reference and Application dated 5th December 2023 that is the subject of the ruling.

C. Tenant's Case

11. The Tenant claims that he has been a tenant of the premises for 4 years during which he has been paying rent at a rate of KShs. 6,500.00 per month.
12. The Tenant contends that the Landlord has threatened to evict him by issuing an incurable notice to vacate dated 5th October 2023.
13. The Tenant disputes claims that his business causes disturbance to the residents of the suit premises and submits that he is in need of money and therefore, he cannot jeopardize his business as it is his only source of income.

D. Landlord's Case

14. It is the Landlord's case that the Tenant has continually sold Miraa late in to the night causing the residents of the premises to move out because of the noise emanating from the tenant's business.
15. Further, the Landlord states that the Tenant is always late in making rent payments which is detrimental to her as she is sick and servicing a loan, and the rent is her only source of income.

E. Jurisdiction

16. The Jurisdiction of this Honourable Court has not been challenged by either party. This Court is satisfied that it has jurisdiction to hear and determine this matter.

F. Issues for Determination

17. I have carefully perused all the pleadings and evidence presented before this Honourable Tribunal by the parties. It is therefore my respectful finding that the following issues are ripe for determination;
 - a. Whether the notice to vacate dated 5th October 2023 is valid.

G. Analysis and Findings

18. This Tribunal notes that this being a controlled tenancy whose termination should be conducted in accordance with Section 4 of the *Landlords and tenants (Shops, Hotels and catering establishments)* Cap 301 Laws of Kenya (the "Act")
19. The landlord herein sought to terminate the tenancy relationship between herself and the Tenant for the reason that the tenant's business had become a nuisance to the residents, causing them to move out.



20. This Court notes that the landlord complied with the requirement of a notice period of not less than two months by issuing three months. Given that the parties herein are self-represented, I am inclined to consider the notice to vacate to be valid.
21. In addition, at the hearing the landlady complained giving several reasons of why she wanted the Tenant to vacate and key of the reasons was the products he sold being Miraa and the kind of customers who came there which shop was located at the gate of a residential building with children. This is unacceptable and the Tenant ought to find an ideal location to trade which will not interfere with the comfort of residents within a residential area.
22. This Court is guided by Article 159 of the Constitution of Kenya, 2010 which provides that Courts and Tribunals shall administer justice without undue regard to procedural technicalities. In the circumstances, I consider three months to be sufficient.

H. Orders

23. Tenant's Application and Reference dated 5th December 2023 is hereby dismissed in the following terms:
- a. Tenant to grant vacant possession of the premises to the Landlord on or before the 30th of March 2024.
 - b. OCS Pangani Police Station to ensure compliance.
 - c. Each party shall bear their own costs.

HON. A MUMA - AG. CHAIR/MEMBER

HON JACKSON ROP - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 13TH DAY OF MARCH 2024 IN PRESENCE OF PAULINE NJOKI, THE LANDLORD IN PERSON AND STEPHEN KAVINDU, THE TENANT IN PERSON.

HON. A MUMA - AG. CHAIR/MEMBER

HON JACKSON RO - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

