



**Njiru v Mugambi (Tribunal Case E072 of 2023)  
[2024] KEBPRT 1449 (KLR) (Civ) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1449 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E072 OF 2023  
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER  
SEPTEMBER 19, 2024**

**BETWEEN**

**SAMMY NJIRU ..... TENANT**

**AND**

**JAYNE NDEGI MUGAMBI ..... LANDLORD**

**RULING**

**A. Dispute background**

1. The tenant/applicant moved this Tribunal vide a Reference dated 19<sup>th</sup> December 2023 under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 with a complaint that the respondent had served him with a notice to vacate the suit premises contrary to provisions of Cap 301 Laws of Kenya.
2. The tenant filed a notice of motion under a certificate of urgency dated 19<sup>th</sup> December 2023 in which he sought for the following orders; -
  - i. That the matter be certified urgent.
  - ii. That pending hearing of the application, the respondent be ordered to desist from any manner of interference with the applicant's business at the suit premises.
  - iii. That the tribunal do punish the respondent for blatant interference with the applicant's business premises.
  - iv. That the O.C.S, Kiritiri Police Station to enforce the orders.
  - v. That the costs of the application be provided for.

3. The application is supported by an affidavit of even date in which the applicant deposes as follows; -
  - i. That the applicant is a tenant at the suit premises on Plot No. LR/36/Kiritiri Market at a monthly rent of KES. 3,500 which is payable yearly.
  - ii. That the tenant has paid the rent for 2023 in full to his landlord by the name of Tabitha Kagina Ikamba. A copy of the receipt is attached.
  - iii. That the respondent has served the tenant with a notice to vacate the suit premises with effect from 1<sup>st</sup> January 2024 without giving proper notice.
  - iv. That the respondent herein is a stranger to the applicant and is not his landlord.
  - v. That unless the court grants the orders sought, the applicant is likely to interfere with the operations of the business and subject the tenant to great losses.
4. On 21<sup>st</sup> December 2023, the tribunal issued interim orders of injunction against the respondent pending hearing inter-partes.
5. The application is opposed vide a replying affidavit dated 6<sup>th</sup> February 2024 in which the respondent deposes as follows; -
  - i. That the applicant never paid rent for the year 2023 as claimed in the supporting affidavit.
  - ii. That the said rent payment receipt dated 10<sup>th</sup> January 2023 is a forgery since the late Tabitha Ikamba Kagina, who was the respondent's mother was critically ill on the alleged date and could not have issued the said receipt.
  - iii. That the said receipt is not that of the tenant but that of Mrs. Njiru who is not known to the respondent and the same does not indicate which house is being paid for.
  - iv. That the respondent's mother died on 26<sup>th</sup> January 2023 at Kyeni Hospital aged 94 years and was buried on 7<sup>th</sup> February 2023. A copy of the late mother's death certificate is annexed as "JNM1".
  - v. That the notice issued to the applicant dated 23<sup>rd</sup> October 2023 is proper.
  - vi. That the respondent is one of the administrators of the estate of the late Silas Kagina Gichoni who was the respondent's father and in whose name the property that is the subject of these proceedings is registered and the respondent took over the running of the said property sometime in April 2019 when the late mother started ailing due to old age. A copy of the Grant of Letters of Administration intestate is annexed as "JNM2".
  - vii. That the matter of the said estate is currently at Nyeri High Court where it is awaiting hearing and determination. A copy of the latest order dated 27<sup>th</sup> July 2023 is annexed as "JNM3".
6. The respondent additionally filed a further affidavit dated 23<sup>rd</sup> February 2024 in which she deposes as follows; -
  - i. That she is a retired public servant having exited public service in August 2022 as the County Executive Member in charge of Land and Physical Planning at Embu County Government.
  - ii. That the respondent is currently engaged in environmental consultancy work and requires the premises for use as her office.

- iii. That the notice issued to the applicant gave sufficient time for the applicant to look for alternative premises as the respondent intended to set up the consultancy office by January 2024.
  - iv. That the respondent is currently operating her consultancy from her house in Embu town which is not only inconveniencing but has greatly compromised the privacy of her home as she has to attend to her clients at her house.
7. The applicant filed a further affidavit dated 9<sup>th</sup> August 2024 in which he deposes as follows; -
- i. That the respondent's claim that the late Tabitha Ikamba Kagina whom the applicant used to pay rent was critically ill on the date the receipt was issued is false.
  - ii. That the late Tabitha Ikamba Kagina was strong and used to collect rent herself in the company of the grandson one Robert Munene Njeru.
  - iii. That the grandson used to write the receipts and the grandmother used to affix her thumbprint on the same.
  - iv. That the respondent has never run the premises and only came to the premises after the demise of the mother demanding for rent.
  - v. That the late Tabitha Ikamba Kagina had been managing the suit premises alone and she went to collect rent from the applicant and his wife on 10<sup>th</sup> January 2023 when the applicant handed her the money and she issued the receipt in the name of the applicant's wife as she is the one who runs the business at the premises.
  - vi. That upon the respondent demanding rent payment, the applicant informed her that he has been paying rent yearly and showed her the receipts issued by the late Tabitha Ikamba Kagina.
  - vii. That the respondent then began threatening to evict the applicant on the basis that he had not been paying rent.
  - viii. That the applicant inquired from one of the widows of the owner of the premises one Esther Mbadi Kagina on whether he should vacate. The said widow confirmed that the applicant has paid the 2023 years rent and that the respondent herein is not the sole administrator of the estate of her late husband and as such had no authority to issue an eviction notice.
  - ix. That there are empty rooms in the same premises and the respondent can always use the empty rooms.
  - x. That the respondent is motivated by malice.
8. The tenant/applicant subsequently filed 2 witnesses' statements by Robert Munene Njeru, the grandson of the late owner of the suit premises and Esther Mbadi Kagina, the wife to the late owner of the suit premises, which are both dated 9<sup>th</sup> August 2024. We shall consider both witnesses' statements as we deal with the issues for determination.
9. Both parties also filed their written submissions as directed by the court with the respondent's submissions being dated 28<sup>th</sup> February 2024 and the applicant's dated 23<sup>rd</sup> August 2024. We shall consider both written submissions as we deal with the issues for determination.

## **B. Issues for determination**

10. The following are the issues for determination; -

- a. Whether there is a landlord/tenant relationship between the parties.
- b. Whether the tenant/applicant is entitled to the orders sought in the application dated 19<sup>th</sup> December 2023.
- c. Who shall bear the costs of the application?

**Issue (a) Whether there is a landlord/tenant relationship between the parties.**

11. The tenant/applicant in his supporting affidavit has sworn that the respondent is a stranger to him and is not his landlord. The tenant has gone ahead to attach a rent payment receipt of KES. 42,000 dated 10<sup>th</sup> January 2023 which was issued to him by the late Tabitha Ikamba Kagina.
12. The tenant has additionally filed a witness statement by Robert Munene Njeru dated 9<sup>th</sup> August 2024 in which he states that upon the demise of his grandfather one Silas Kagina Gichoni, his late grandmother one Tabitha Ikamba Kagina took the role of collecting rent from the suit premises. He further confirms that he used to accompany his late grandmother to collect the rent from the premises and that the receipt dated 10<sup>th</sup> January 2023 was issued to the applicant in his presence.
13. The tenant also filed a witness statement by Esther Mbandi Kagina who is the wife to the late Silas Kagina Gichoni, the owner of the suit premises, in which she avers that the late Tabitha Ikamba Kagina used to manage the premises and was not sick as alleged by the respondent. She adds that the applicant had been paying rent to the late Tabitha Ikamba Kagina annually and that the respondent is not the only administrator to the estate of the late Silas Kagina Gichoni and therefore has no authority to issue notice to the tenants before notifying the other administrators.
14. The tenant in his written submissions supports the averments above by stating that the respondent is not the only administrator of the suit premises and therefore he should be allowed to use the premises until the estate is fully distributed and a landlord is confirmed by the court.
15. The respondent on the other hand states in his written submissions that she is one of the administrators of the estate of the late Silas Kagina Gichoni and that she started managing the suit premises in April 2019 when her mother, the late Tabitha Ikamba Kagina fell ill.
16. The respondent reiterates that the said receipt of rent payment is a forgery.
17. We have perused the said rent payment receipt dated 10<sup>th</sup> January 2023 and we find that the same provides sufficient evidence of rent payment to the late Tabitha Ikamba Kagina and the respondent has not tendered any proof to show that the same is a forgery. The respondent has also not tendered any evidence to show any rent payment to her since she allegedly took over the management of the premises from April 2019.
18. This Tribunal's jurisdiction is conferred by Cap 301, Laws of Kenya under Section 2 (1), which defines a tenant and a landlord as follows;

“tenant” in relation to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding, and includes a sub-tenant;

“landlord”, in relation to a tenancy, means the person for the time being entitled, as between himself and the tenant, to the rents and profits of the premises payable under the terms of the tenancy;”

19. The 2 witnesses' statements filed by the tenant/applicant further support the tenant's case and until the conclusion of the matter of the said estate of late Silas Kagina Gichoni which is currently at Nyeri High Court, this tribunal has no jurisdiction to determine the ownership of the suit premises.
20. We find and hold that there is no landlord/tenant relationship between the parties herein and the notice to terminate tenancy issued by the respondent is illegal.

**Issue (b) Whether the tenant/applicant is entitled to the orders sought in the application dated 19<sup>th</sup> December 2023.**

21. The tenant/applicant approached this tribunal seeking for orders that the respondent be restrained from interfering with his business at the suit premises as well as punishment of the respondent for blatant interference with his business.
22. As already established above, the tribunal has found that there is no landlord/tenant relationship between the parties herein and therefore the respondent has no right to interfere with the applicant's tenancy and the tribunal shall grant the applicant the said prayer.
23. In regard to the prayer for punishment of the respondent for blatant interference with the applicant's business premises, the applicant has not shown proof of the same and therefore this tribunal is unable to grant such orders.

**Issue (c) Who shall bear the costs of the application?**

24. As regards costs, the same are in the Tribunal's discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall award the costs of the reference and application to the tenant/applicant being the successful party.

**C. Orders**

25. In view of the foregoing, the following final orders commend to us; -
  - a. The application dated 19<sup>th</sup> December 2023 is hereby allowed in terms of prayers 2, 4 and 5.
  - b. The reference dated 19<sup>th</sup> December 2023 is settled in terms.
  - c. The notice to terminate tenancy dated 23<sup>rd</sup> October 2023 is declared invalid and unlawful.
  - d. Costs of KES. 15,000 to the tenant/applicant to be paid by the Respondent personally.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19<sup>th</sup> DAY of SEPTEMBER 2024.**

**HON. JOYCE AKINYI OSODO**

**(PANEL CHAIRPERSON)**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON GAKUHI CHEGE**

**(MEMBER)**

In the presence of: