



Njeru v Sankei (Tribunal Case E661 of 2023)
[2024] KEBPRT 1283 (KLR) (At Nairobi) (29 August 2024) (Judgment)

Neutral citation: [2024] KEBPRT 1283 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
AT NAIROBI
TRIBUNAL CASE E661 OF 2023
CN MUGAMBI, CHAIR
AUGUST 29, 2024

BETWEEN

MARY NJERU APPLICANT

AND

THOMAS KAGOSHI SANKEI RESPONDENT

JUDGMENT

Introduction

1. The Landlord's notice to terminate tenancy is the one dated 20.4.2023, effective 1.07.2023. The Tenant in opposition to the Landlord's notice to terminate tenancy has filed a Reference to the Tribunal dated 20.6.2023.
2. On 4.09.2023, the instant case was consolidated with case No. BPRT E842 of 2023.

The Landlord's Case

3. The evidence of Mr. Thomas Sankei Kagoshi may be summarized as follows:-
 - a. That the Tenant is in occupation of Plot No. B140 Ongata Rongai which belongs to the Landlord.
 - b. That the plot initially belonged to Mr. Alex Sialala Kipaiyo and was transferred to the Landlord on 1.09.2022.
 - c. That the Landlord found four Tenants in the premises including the Tenant.



- d. That all the other Tenants have continued to pay the Landlord rent except the Tenant herein who has never paid any rent to the Landlord and as a consequence of which the Tenant issued a notice to terminate tenancy to the said Tenant. The notice is the one dated 20.04.2023.
 - e. That the notice required the Tenant to vacate the premises by 01.07.2023 which the Tenant did not do and neither did she pay rent.
 - f. That the Tenant knows the Landlord and of all the other Tenants, the Landlord only has a problem with the Tenant.
 - g. That the Landlord would like the Tenant to vacate the suit premises and pay the rent arrears.
 - h. That the Landlord would like to use the premises for his own business purposes.
4. Under cross examination by the Tenant, the Landlord stated as follows;-
- a. That the suit premises is a business premises.
 - b. That it is not true that the Tenant has a lease agreement with one Mr. Alex Sialala.
 - c. That Mr. Alex Sialala sold the suit premises to the Landlord who has been receiving rent and is the rightful recipient of the rent for the said premises.
 - d. That the Landlord issued the Tenant with a notice to terminate tenancy.
 - e. That the Landlord is aware that cases filed by the Tenant have been finalized.
 - f. That the Landlord is not aware that the Tenant was in a reserve house and is only interested in having the Tenant move out of the suit premises.
5. On cross examination, the Landlord clarified that he does not have any other case with the Tenant in any other court and further denied destroying any of the Tenant's properties.

The Tenant's Case

6. The Tenant's evidence in chief may be summarized as follows;-
- a. That the Tenant is the Tenant of one Mr. Alex Sialala by an agreement dated 01.01.2020 which was for a term of twenty four (24) months.
 - b. That the lease required a six (6) months' notice to terminate and all disputes arising from the said lease were to be referred to arbitration.
 - c. In April, 2020, the sewer line for the premises burst, the Tenant became unwell and was hospitalized and during this period, Counsel for Mr. Alex Sialala wrote to the Tenant asking her to vacate the premises.
 - d. That the Tenant sued the said Alex Sialala in the Rent Restriction Tribunal.
 - e. That Alex Sialala sent people to burn down the suit premises as a result of which the Tenant lost goods worth Kshs. 1,350,000/=.
 - f. That on 04.05.2022, Mr. Alex Sialala requested that the case at the Rent Restriction Tribunal be transferred to the Business Premises Rent Tribunal and on the same day he issued the Tenant with a notice of termination of tenancy stating that he wanted to put the premises to his own use.



- g. That on 16.5.2022, Mr. Alex Sialala and his son attacked the Tenant in the premises, the Tenant fled to the police station where she reported the matter and was advised to seek assistance at the Tribunal.
 - h. Consequently, the Tenant filed BPRT Case No. E413 of 2022 which is still pending in court.
 - i. That Mr. Alex Sialala did not obey court orders to re-open the premises.
 - j. That the Tenant's goods worth Kshs. 1,287,250/= were destroyed and electricity disconnected in the year 2020.
 - k. That the Landlord herein (Mr. Sankei) started constructing the suit premises in the presence of Mr. Alex Sialala and the other Tenants left because construction was on.
 - l. That the suit premises has gone up three storeys, the Tenant's premises is barricaded and she cannot therefore pay any rent.
 - m. That the premises has many cases and pending issues and the Tenant would like to be compensated for the loss of her goods for which she blames Mr. Alex Sialala.
 - n. That the Tenant did not know that Mr. Sankei the Landlord herein had purchased the premises.
 - o. That people have been pouring sewerage on the door step of the Tenant which is making her sick.
 - p. That the Tenant does not have a dispute with the current owner of the premises and she only came to learn that the premises was sold in October 2022. The Landlord herein did not inform her that he had purchased the premises.
 - q. That Mr. Alex Sialala is unwell though the Tenant calls him often.
 - r. That Mr. Alex Sialala told the Tenant that he was working to meet the cost of her losses and indeed one welder sent to the Tenant Kshs. 7,000/= for the goods they had destroyed.
 - s. That Mr. Alex Sialala should have given the Tenant six (6) months to vacate the premises and not three (3) months.
 - t. That the Tenant was desirous of calling witnesses from the police service and the anti-corruption commission to testify on her behalf.
7. Upon Cross Examinatino, the Tenant stated as follows:-
- a. That she came to court to deal with Case No. 905/2020 only to find Case No. E661/2023.
 - b. That she received the notice to terminate from a stranger.
 - c. That she is the one who filed the instant suit.
 - d. That she did not have her documents as she had left them at home.
 - e. That the notice to terminate tenancy stated that the Tenant owed the Landlord rent arrears of Kshs. 84,000/= which the Tenant denies.
 - f. That the premises is welded and power disconnected since 2022.
 - g. That her receipts got burnt in the premises.



- h. That she cannot remember the last time she paid rent.
- i. That the Tenant is at the premises and continues to take care of the same.

Analysis and determination

- 8. The only issue that arises for determinations in this case is whether the Landlord has proved his notice to terminate tenancy and what orders then the court ought to make under the provisions of Section 9 of Cap 301.
- 9. The Landlord's notice to terminate tenancy is brought on the grounds;
 - a. That the Tenant has basically failed to pay rent and has arrears amounting to Kshs. 84,000/=.
 - b. That the Landlord intends to use the premises for a period of not less than one (1) year for purposes of carrying out a retail shop.
- 10. The Landlord testified that he purchased the suit premises from one Mr. Alex Sialala and the property was transferred to the Landlord on 1.09.2022. It is the Landlord's evidence that he found Tenants in the suit premises amongst them, the Tenant herein. It is the evidence of the Landlord that while the other Tenants continued to pay rent, the Tenant herein refused to pay any rent and has accumulated rent arrears amounting to Kshs. 84,000/=. In regard to this issue, the Tenant denied owing the Landlord any rent and stated that she could not remember the last time that she paid rent as her receipts got burnt in the suit premises.
- 11. It is evident that the suit premises belong to the Landlord having purchased the same from one Mr. Alex Sialala. The Tenant acknowledges this purchase and transfer of the suit property and only contends that the Landlord did not inform her that he had purchased the property. It is further evident that the Tenant has not paid rent for the suit premises to the new Tenant and she cannot continue clinging to the previous owner who is no longer her Landlord and therefore not entitled to any rent. In this regard, I am satisfied that the Landlord has established the ground of termination of the tenancy on the basis of non-payment of rent. Under the provisions of Section 7(1)(b) of Cap 301, the Landlord is entitled to terminate the tenancy;

“where the tenant has defaulted in paying rent for a period of two (2) months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable.”
- 12. The Tenant has expressly stated in her evidence that she does not have any dispute with the Landlord herein. The Landlord has also confirmed that he has not filed any other case against the Tenant in any other court. What therefore emerges from the proceedings and evidence is that the Tenant has had several run ins with one Mr. Alex Sialala who was the previous owner of the suit premises. Mr. Alex Sialala no longer has any property interests in the premises and nor is he the Landlord of the Tenant. In these circumstances, the Tenant is at liberty to pursue the said Mr. Alex Sialala for any wrongs that the Tenant considers to have been brought about by the said Alex Sialala. It is not fair in these circumstances to visit the presumed sins of MR. SIALALA upon the shoulders of the Landlord.
- 13. It is my finding therefore that the Landlord has proved his notice to terminate tenancy against the Tenant on account of the Tenant's default in rent payment.

Disposition

- 14. Consequent to the above findings, I make the following orders;-



- a. That the Tenant between the parties is hereby terminated.
- b. That the Tenant shall render vacant possession of the premises within the next thirty (30) days of this Judgment failing which the Landlord will be at liberty to evict the Tenant using a licensed Auctioneer.
- c. That the Tenant will pay the outstanding rent arrears of Kshs. 84,000/=, failing which the Landlord will be at liberty to levy distress for the same.
- d. That the Tenant will bear the costs of this suit.
- e. This file is ordered closed on these terms.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF AUGUST, 2024.

HON. CYPRIAN MUGAMBI CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mary Njeru- the Tenant and in the absence of the Landlord

READ BY;

HON. PATRICK KITUR - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

