



**Rukwaro v Muthuuri (Tribunal Case E026 of 2024)  
[2024] KEBPRT 1332 (KLR) (Civ) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1332 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E026 OF 2024  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
SEPTEMBER 18, 2024**

**BETWEEN**

**PURITY MUGURE RUKWARO ..... TENANT**

**AND**

**JOYCE MUTHUURI ..... LANDLORD**

**RULING**

1. The Tenant originated these proceedings by the reference dated 9/12/2024 which is anchored under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (Cap. 301) herein after “the Act”. The complaint by the Tenant was that:-
  - i. The Tenant is in possession and occupation of part of ground floor of the premises constructed on L.R No. Nyaki/Mulathankari/1359 located within Gatimene area along Meru-Maua Road, based on an oral tenancy agreement with the Landlord.
  - ii. The Tenant operates a business of a butchery and fast food/hotel in the leased premises.
  - iii. The tenancy is protected in accordance with the Landlord and Tenant (Shops, Hotels and Catering Establishments Act) Cap. 301.
  - iv. The Tenant does not owe the Landlord any rent.
  - v. On 4<sup>th</sup> April, 2024, the landlord verbally told the Tenant to vacate the lease premises immediately or else the landlord will forcefully evict the Tenant.
  - vi. The verbal notice from the landlord is illegal, null and void for failure to comply with the law.
  - vii. The Landlord has not served the Tenant with any written notice to terminate the tenancy as by law required.



- viii. The landlord has threatened and is threatening to illegally and forcefully evict the tenant and to destroy or damage the tenant's goods.
  - ix. The Tenant is not able to peacefully and quietly enjoy the leased premises in the circumstances.
  - x. The Tenant is apprehensive that unless this Honourable tribunal intervenes the landlord may evict the Tenant and destroy the tenant's goods leading to irreparable damage to the tenant.
  - xi. The Tenant prays that the Honourable tribunal investigates and hears the complaint and make any such orders as are necessary to stop the threats and make such other orders as are necessary to protect the Tenant.
- 2. The Tenant further filed the application dated 6/6/2024 where she sought to amend the particulars of the plot on which the demised premises are erected. She wished to have the same to read L.R No. Nyaki/Mulathankari/1359 instead of Ntima/Igoki/1359. By consent recorded by the court on the 11/6/2024, the said amendment was allowed.
  - 3. The Tenant also filed the supplementary Affidavit sworn on the 15/5/2024 and a further supplementary affidavit sworn by herself on the even date.
  - 4. On her part, the landlady filed the Replying Affidavit sworn on the 30<sup>th</sup> April 2024 and the submissions dated 9/6/2024.
  - 5. We shall briefly highlight on the salient issues as came out from the evidence of the respective parties.

#### **A. Case for the Tenant**

- i. The landlord had issued her with a verbal notice to terminate the Tenancy and was threatening to evict her.
- ii. She had met all her cardinal obligations and in particular the timely payment of rent and other fees and charges.
- iii. The purported termination was not in compliance with the Law.
- iv. The Business permit for the business that she runs on the premises are in her names.
- v. She paid the rent and deposit for utility bills at Kshs.16,500/- through her husbands telephone number.
- vi. She runs her business within the law and has not in anyway caused any nuisance to other Tenants or interfered with the structural layout of the premises.
- vii. Had not sublet the demised premises.

#### **B. Case for the Landlord.**

- i. The Tenant was a stranger to her as she had rented the demised premises to one George Home Maina.
- ii. He paid a deposit of Kshs.14,000/- and was to pay the deposit for utilities later.
- iii. Later on, she learnt that the Tenant had leased out the premises to 3<sup>rd</sup> parties without her consent.
- iv. The Tenant has not been paying rent and had instructed their counsel to facilitate levy of distress.



- v. The Applicant had sent her Kshs.28,000/- which she refunded to her because they do not have a contractual relationship.
  - vi. The Tenant had not complied with the court orders to pay all the rents in arrears.
6. Looking at the evidence presented to us in its totality, this matter purely turns on the question of whether the Landlady's purported notice of termination dated 5/4/2024 addressed to George Home Maina and the purported verbal notice to Purity Mugure Rukwaro are valid and therefore lawful.
  7. The next issue that this court is called upon to consider is whether the Tenant/Applicant is a Tenant of the Respondent and therefore the jurisdiction of this court.
  8. On the 1<sup>st</sup> issue, the landlady claimed to have issued the termination notice dated 5<sup>th</sup> April 2024 to one George Home Maina. The same was to take effect on the 1/5/2024. On his part, George Home Maina denounced the notice by his letter dated 29/4/2024 which is the landlady's annexure. He further denied being the landlady's Tenant in his supplementary affidavit dated 15/5/2024.
  9. His contention is that his only nexus between him and the Landlady was the Applicant who was his wife. The rent payment was by his wife but through his telephone. He denied any relationship between himself and the landlady.
  10. On her part, the Applicant reiterated her husband's averments and further asserted that she was the Tenant in the demised premises. That the license to run the business was also in her names. The same was annexed as "PMR 3".
  11. Section 4(2), 4(4) and 7 of the Act and Regulation 4(1) of the Regulations to the Act are very clear on the requirements of a valid and therefore lawful termination notice. In particular Section 4(4) of the Act provides that:-
 

"No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, as shall be specified therein".
  12. Mr. George Home Maina over and above denying that he was a tenant, also asserted that he was only served with the termination notice on the 24<sup>th</sup> April, 2024 and responded to the same by his letter dated 29<sup>th</sup> April 2024. The tenant claimed that the notice issued to her was verbal as were the threats of eviction.
  13. In our view all these notices were in conflict with the law and therefore of no effect nor consequence. In this we rely on the locus Classicus case of Fredrick Mutua Mulinge T/A Kitui Uniform v Kitui Teachers Housing Sacco [2017] e KLR where the court held that:-
 

"It is clear from the foregoing authorities that the tenancy notice dated 28<sup>th</sup> June 2014 was null and void for failing to give the appellant two months notice as required under the Act and as such was of no legal effect. Life could not be breathed into the defective notice by the letter dated 1/7/2024 through which the Respondent purported to amend the effective date of the notice. The letter was not a notice in the prescribed form provided for under the Act".
  14. We therefore determine that the termination notice dated 5<sup>th</sup> April 2024 is unlawful. If at all a verbal notice had also been issued to the tenant the same would also be illegal and a nullity in law.
  15. On the 2<sup>nd</sup> issue, George Home Maina has denied being a Tenant of the landlord. That the initial rent paid through his phone has by was wife the Tenant/Applicant herein. The Applicant herself demonstrated that she was in possession of the demised premises and run a business thereof under a



license that was in her name. This averments on oath were never disturbed by any evidence offered by the landlady.

C. We cannot infer any benefit or advantage that would have accrued to the landlady if George Maina was the Tenant or disadvantage or introduce adversity where the Applicant is the Tenant. We therefore cannot deduce any motivation for George Maina to denounce such tenancy if it subsisted or for the Applicant to assume the same.

14. In our view, the Applicant is the lawful tenant of the Landlord on L.R No. Nyaki/Mulathankari/1359.

15. We further and in line with the Locus Classicus Case of *Giella v Cassman Brown* [1973] EA 358 find that the Applicant has established all the three principles on the grant of injunctions from our finding that the purported termination notices were illegal and of no legal effect.

16. On costs we comply with the wisdom of the proviso to section 27 of the Civil Procedure Act and award costs to the Tenant/Applicant.

17. In the final analysis, we are of the view that with the findings herein before, there will be nothing left of the reference dated 9<sup>th</sup> April 2024 and the same will be deemed as determined in the same terms with the application of even date. The orders that therefore commend to us are the following:-

- (i) That the reference and Application both dated 9/2/2024 are allowed in terms that the Tenant shall be allowed quiet possession of the demised premises namely L.R NO. Nyaki/Mulathankari/1359.
- (ii) That the Tenant shall within seven (7) days of the date hereof pay all the rents in arrears and in default the landlady shall be at liberty to levy distress in recovery of the same at the cost of the Tenant.
- (iii) That the Landlady shall pay costs to the Tenant assessed at Kshs.10,000/- to be offset from the rent payable to the Landlady.

Those are the orders of the court.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF JULY, 2024.**

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI**

**PANEL CHAIRPERSON MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL BPRT**

**Ruling delivered in the presence of Tenant/Applicant and Mr. Kaumbi for the Landlord/Respondent.**

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI**

**PANEL CHAIRPERSON MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL BPRT**

