



**Mange v Africa International University (Tribunal Case E865 of 2023)  
[2023] KEBPRT 1245 (KLR) (6 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1245 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E865 OF 2023  
N WAHOME, MEMBER  
DECEMBER 6, 2023**

**BETWEEN**

**FLORENCE MANGE ..... TENANT**

**AND**

**AFRICA INTERNATIONAL UNIVERSITY ..... TENANT**

**RULING**

1. The Tenant moved the court by her reference dated 8<sup>th</sup> September 2023 and the notice of motion dated 4<sup>th</sup> September 2023 which was brought under a certificate of urgency. The reference complained of the following issues:
  - a. Illegal eviction and termination of tenancy agreement, landlord has no cogent reasons to terminate Tenancy,
2. On the other hand the motion sought for the following orders,
  - i. That this Honourable tribunal be pleased to certify this matter as urgent.
  - ii. That this Honourable court be pleased to issue an order in favour of the Applicant pending the final hearing prohibiting the defendants either directly, or indirectly from terminating, altering, unilaterally amending the existing lease agreements, evicting the applicant from their leased premises situated at shop No. 3 Nairobi.
  - iii. That this Honourable court be pleased to issue an order, direct and accept the Applicant/lessor of shop No. 3 Nairobi to deposit rent in the Honourable Tribunal pending the defendant's ownership being amicably, legally resolved.
  - iv. That the respondent's termination notice dated 29<sup>th</sup> June 2023 is defective as well as the concerned advertisement for Tuckshop.



- v. That the costs of this application be provided for.
3. The tenant was granted interim orders ex-parte on the 7<sup>th</sup> September 2023 and the matter fixed for inter-partes hearing on the 21<sup>st</sup> September 2023. Thereafter on the 18<sup>th</sup> October 2023 it was by consent agreed that this application be canvassed by way of written submissions.
  4. In the meantime, the respondent filed its replying affidavit sworn on the 4<sup>th</sup> October 2023 whereas the Tenant filed a further affidavit sworn on the 1<sup>st</sup> November 2023. The tenant also filed her submissions dated 6<sup>th</sup> November 2023 and the landlord filed his submissions dated 24<sup>th</sup> November 2023.
  5. The case for the Tenant was that the landlord wanted to evict her from the demised premises which was a Tuckshop identified as No. 3 within the Respondents premises. She was paying her rents faithfully and that the respondent had no reason to evict her. She contended that the respondent had issued her with an illegal and defective Termination Notice.
  6. The Tenant required to be granted leave to deposit the rent payable into the tribunal until a purported ownership dispute was resolved. She thereafter sought for the orders as appears on the face of the Notice of Motion.
  7. The landlord on its part contended that the Tenant was abusing court processes as she had a similar case in court being Nairobi BPRT Case No. 152 of 2018 which remained unresolved and therefore “subjudice”.
  8. There was no ownership dispute on the Tuckshop which was located within the respondents premises, the lease between the parties was for a term of 1 year ending 30<sup>th</sup> September 2023 and that the respondent merely notified the Tenant of the impending expiry of lease and that no termination notice had ever been issued to the Tenant.
  9. The respondent annexed letters marked CM 5 and 6 to demonstrate the notices to the Tenant on the expiration of the lease agreement between the parties. That the tenant had agreed on the terms of the reviewed lease by endorsing the letter dated 11<sup>th</sup> November 2023 marked “CM4” to the same effect.
  10. It was the respondents contention that the instructions on who was TO BE paid rents were very clear. It therefore sought for the dismissal of the Applicants application with costs.
  11. I have perused both parties submissions and the authorities attached thereto and have taken the same into full account in this Ruling.
  12. Having looked at the reference herein and the notice of motion, it is my determination that the ruling on the Application will completely compromise the reference and there will be nothing left to be decided on.
  13. The upshot of that is that the determination of this Application will apply to the reference.
  14. In view of all the above, it is my considered opinion that the issues for determination in this matter are the following,
    - A. What was the effect of the parties tenancy agreement
    - B. Did the landlord issue a termination notice on the tenant and what was its effect.
    - C. Is the tenant deserving of the reliefs sought
    - D. What orders commend themselves to this court.



- E. Who should bear the costs of this suit.
- F. What was the effect of the parties tenancy agreement
15. It is not in dispute that the parties herein entered into a fresh one (1) year lease agreement on the demised premises herein. The same was to commence on the 1/10/2022 and expire on the 30/9/2023. However the same was conditional on the Tenant withdrawing Nairobi BPRT case no. 152/2018 and paying rent in arrears at Kshs.56,300/-.
  16. From evidence on record, the Tenant never withdrew the said case but it is not evident whether the rent in arrears was ever paid. Both parties were quiet on that issue, But it is my view that once the new tenancy relationship was entered into between the parties, the said case became obsolete and of no purposes. However the university should have been well advised to register the renewed tenancy he see as a consent in the said suit.
  17. I do not agree that the said suit in view of the premises proceedings has any bearing on the same. I reiterate that the renewal of the tenancy relationship between the parties rendered BPRT case No. 152 of 2018 of no purpose nor consequence. I also decline the invitation to find that the present suit is subjudice in my view, the subjudice rule applies to a matter that is under judicial consideration being prohibited from public discussion elsewhere. The same cannot apply here.
  18. Turning back to the agreement here between the parties, it is trite law that parties are bound by their own commitments through agreements is to purely interpret the intentions of the parties and enforce the same.
  19. In ELC Appeal no. 13 of 2020 at Eldoret David Cullen – Vs- Samuel Kitalai & 2 Others the court held that:-
 

“This is what the parties entered into hence the terms where specific for the lease of a house. The Tribunal had no business reuniting the contract for the parties as was held in the case of Housing Finance Company of Kenya Limited – vs- Njuguna KLR 1176(CCK)

That:

“Courts shall not be the for a where parties indulging in varying terms of their agreements with others will get sanction to enforce the varied contracts. Contracts belong to the parties and they are at liberty to negotiate and even vary the terms as and when they choose. This they must do together with the meeting of the minds. If it appears to a court that one party varied the terms of a contract with another, without the knowledge, consent or otherwise of the other, and the other demonstrates that this court will say no to the enforcement of such a contract”.
  20. In Zurwe vs Oreti Atinde civil Appeal No. 217 of 2003 the court quoted with approval a passage form Halisbury’s Laws of England 4<sup>th</sup> Edition Vol. 12 to the effect that,
 

“ Where the intention of the parties has been reduced into writing, it is in general not permissible to adduce extrinsic evidence, whether oral or contained in writing such as instructions, drafts, articles, conditions, either to show their intention or to contradict, vary or add to the terms of the document”.



21. Finally in *Potgieter – vs- Stumberg and Another* (Civil Appeal No. 20 of 197 (1972) EACA 19 the court held that,

“The court ascertains the intention of the parties from the terms of the contract, the conduct of the parties and the circumstances of the case”.

22. The upshot of this is that the parties herein entered into an unequivocal agreement for the term of one (1) year to end on the 20/9/2023. That is as plain and simple as any contract can be. I therefore determine that the Tenancy arrangement between the Tenant and the landlord terminated effectively on the 30/9/2023.

### **B. Did The Landlord Issue A Termination Notice Upon The Tenant And What Was Its Effect**

23. A Termination notice under Section 4(2) of Cap. 301 provides as follows;

“A landlord who wishes to terminate a controlled tenancy, or alter, to the detriment of the tenant, any term or condition in or right or services enjoyed by the Tenant under such a tenancy, shall give notice in that behalf to the tenant in the prescribed form”.

24. The case of [\*Fredrick Mutua Mulinge T/A Kitui Uniform – vs- Kitui Teachers housing Co-operative Society\*](#) ELC Appeal No. 2016,

The court has given a blow or an effective Notice to terminate or adversely alter the terms of a tenancy against the other party.

24. In my view, the letter dated 29/6/2023 (Annexure CM-5) was not a notice of termination of tenancy and was not intended to be one. It merely notified the Tenant that the Tenancy Agreement was to expire on the 30/9/2023 and that the landlord did not intend to renew the same.
25. The tenants advocate wrote the letter dated 10/8/2023 proclaiming the illegality of the landlords letter dated 29/6/2023 but by the landlord’s letter dated 22/8/2023 (Annexure CM 6) it was emphasized that the landlord was merely alerting the Tenant of the expiry of their Tenancy Agreement on the 31/9/2023 and the landlord’s intent not to renew the same.
26. From the foregoing, it is my conclusion that no termination notice was issued to the tenant by the landlord either by the letters dated 29/6/2023 and 22/8/2023 or from any other disclosed source as the same was unnecessary as the parties agreement on the tenancy was for a fixed term.

### **(c) Is The Tenant Deserving of the Reliefs Sought**

28. Having made the determination or issue No. 1 and 2 herein above, it is my finding that the Tenant is not deserving of any of the orders sought in the reference dated 8/9/2023 and on the motion dated 4/9/2023.

### **D. Who Should Bear The Costs Of This Suit**

29. Looking at this matter in its totality, there is no compelling reason or reasons why it should depart from the conventional section 27 of the [\*Civil Procedure Act\*](#) on award of costs. I would award the landlord the costs of both the reference and the motion.

### **E. What Orders commend themselves to this court.**

30. In the final disposal of this matter, the orders that commend themselves to me are:-



- (i) The reference and application dated 8/9/2023 and 4/9/2023 respectively are both dismissed.
- (ii) The Tenant will pay all the rent in arrears and mesne profits for the months of October, November and the days of occupying the demised premises in December, 2023.
- (iii) The Tenant shall vacate the demised premises forthwith and in any event in the next seven (7) days of the date hereof or be evicted.
- (iv) The Landlord is granted costs at Kshs.20,000/-.

Those are the orders of the court.

**HON. NDEGWA WAHOME, MBS MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**6/12/2023**

Ruling delivered in the presence of:

Mr. Nyaboma for the Respondent

M/S Onyango for Mr. Odhiambo for the Tenant/Applicant

