



**Gakuna v Mwangi & another (Tribunal Case E165 of 2023)
[2024] KEBPRT 656 (KLR) (22 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 656 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E165 OF 2023
N WAHOME, MEMBER
APRIL 22, 2024**

BETWEEN

JULIA WA BPO GAKUNA TENANT

AND

CHARLES KORI MWANGI 1ST RESPONDENT

MARGARET WANJIRU MWANGI 2ND RESPONDENT

RULING

1. The Applicant originated these proceedings through her reference dated 11th September 2023. The same was said to be founded on Section 12(4) of the Landlord and Tenant (Shops, Hotels and Catering Establishments Act) Cap. 301 hereinafter “the Act”. Her grievance was that:-

“The Respondents herein have issued an order from the Nyahururu Law Courts dated 19th December 2022 wanting me to vacate from the suit premises within 48 hours yet I have been paying rent religiously and when due to Esther Njoki Mwangi the Landlord/administrator of the suit premises plot 2 JuALAKO Ol Kalau. Therefore pray that the Respondents herein be restrained from illegally evicting, harassing or in any manner interfering with my tenancy at plot No. 2 Jua Lako in OL Kalou until the matter is heard and determined”.

2. The reference was accompanied by a notice of motion of even date which sought for the following reliefs:-
 - i. That pending the hearing and determination of this case inter-partes, the Respondents by themselves, their servants, employees and/or agents be restrained from harassing threatening, evicting the Applicant/Tenant and or in any other manner interfering with her tenancy at Plot No. 2 Jua Lako- Ol Kalou.
 - ii. That the OCS Ol Kalou Police Station do ensure compliance of these orders.



- iii. That the costs of the application be provided for.
3. On being served, the Respondents filed the Replying Affidavit sworn by the 1st Respondent Charles Kori Mwangi on the 6th November 2023. However, in the absence of the Landlord and counsel on the 2nd October 2023, prayers 1 and 2 in the application by the Applicant were confirmed and the matter was directed to proceed for hearing of the reference.
4. It however seems that the parties seemed not to appreciate the directions and in vain seemed to pursue an application that was already spent. I however note that the issues in the application are the same as in the reference and will proceed to render a judgement on the basis of the materials placed before me.
5. The Tenant/applicant pursuant to directions taken on the 15th December, 2023 filed the submissions dated 22nd February 2023 whereas those of the Respondents are dated 14th March 2024. I will briefly proceed to list the respective cases for the parties.

A. Case for the Tenant

- i. She has been a tenant at the demised premises since March 2021 and paying rent initially to M/S Skylink Agencies and later to Esther Njoki Mwangi which she is doing todate.
 - ii. The rent was Kshs.15,000/- per month but in August 2021 it increased to Kshs.27,000/- and she is compliant in payment of the same.
 - iii. By an order of the Nyahururu chief Magistrate's Court in CMELC Case No. 27 of 2022 issued on the 22nd November 2022, she was to vacate the premises in 48 hours.
 - iv. The Respondents want to evict her without any regard to her investments at the premises.
 - v. Her tenancy was controlled and could not be terminated without order of this court.
6. She therefore sought that the Respondents be restrained from in anyway interfering with her quiet possession of the demised premises.

B. Case for the Landlords/Respondents

- i. The Chief Magistrate's Court at Nyahururu in CMELC Case No. 27 of 2022 has recognized them as the joint administrators of the estate of the late Joseph Mwangi Kori the owner of Plot No. 2 Jua Lako Ol Kalou.
- ii. The said court has issued orders for the Applicant to vacate the premises in 48 hours which orders were issued on the 22nd November 2022 but the applicant has defied them despite never having challenged them.
- iii. By filing the present suit, the Applicant merely intended to defeat the orders of the magistrate's court and it was a mockery of justice.
- iv. The Respondents became the administrator of the Estate of the late Joseph Mwangi Kori by the grant of letters of administration intestate issued on the 25/4/2019.
- v. When the Applicant purportedly became a tenant in the demised premises in March 2021 it was without their consent.
- vi. The Applicant has never paid any rent to them even after the court's directions to the same effect.



7. The Respondents therefore sought that the Applicants suit be dismissed with costs.
8. Having perused all the pleadings and other materials placed before me including the parties respective submissions, I am of the view that the issues for determination in this matter are the following:-
 - A. Whether the Applicants reference has merit.
 - B. Who should bear the costs of this suit.
9. On whether the Applicants suit has merit, I note that the Applicant has not disclosed who Esther Njoki Mwangi Maina to whom she pays rent is. She has also not impugned the reality that the Respondents are the administrators of the Estate of the late Joseph Mwangi Kori with proprietorship rights over plot no. 2 Jua Lako Ol Kalou.
10. It is inexplicable that the Applicants has not even attempted to show any payment of rent to the Respondents. Indeed orders on her by this court to crystalize such payment was never complied with.
11. I also note that the Applicant has never challenged the orders by the Nyahururu Chief Magistrates Court in CMELC case No. 27 of 2022.
12. By allowing the reference herein, it would be tantamount to sitting on an appeal to a higher court's determination which invitation I respectfully decline.
13. On the other hand, a controlled tenancy may have been created pursuant to the provisions of Section 2(1) of the Act in the event that there was established the status of a tenant and landlord in respect of the Applicant and landlord herein by their conduct.
14. I do not think that such relationship was ever established. Section 2 of the Act defines a landlord as:-

“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”.

In this case, the Applicant has never paid any rents nor conferred any profits to the Respondents. She also in unexplained circumstances left out Esther Njoki Mwangi whom she purportedly pays rents to from these proceedings.
15. The Act further and under the same Section 2 defines a Tenant as:-

“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”.

The applicant was not put into the demised premises by the Respondents nor with their authority and would therefore not fall within the definition of a tenant nor entitled to the demised premises.
16. I therefore do not find that there is a landlord/Tenant relationship between the Applicant and the Respondents in this matter as envisaged by the law. No evidence was also offered to the effect that the Applicant pays any rents to Esther Njoki Maina or that Esther Njoki Maina has any entitlement to the demised premises. I would therefore dismiss the reference and with it the application both dated 11/9/2023 as lacking in any merit.



17. However, the law has ably addressed the circumstances as those obtaining in this matter and has offered mechanisms for their resolution. “Section 12(1) (e) of the Act donates the following powers to this Tribunal:-

“To make orders, upon such terms and conditions as it thinks fit for the recovery of possession and for the payment of arrears of rent and mesne profits, which orders may be applicable to any person, whether or not he is a Tenant, being at any material time in occupation of the premises”.

18. In this regard, the Applicant by her own dispositions has confirmed that she paid Kshs.75,000/- for the months of between March and August, 2021 and has thereafter been paying Kshs.27,000/- per month effective August, 2021. Taking the month of April, 2024 those are 21 months. The rent payable for those months is Kshs.567,000/- you add Kshs.75,000/- aforesaid and it gives you a total of Kshs.642,000/-.
19. This are the amounts that the Respondents are entitled to form the Applicant by the virtue of her occupation of the premises during the period in issue. I would therefore award the Kshs.642,000/- to the Respondents in mesne profits.

C. Who should bear the costs of this suit.

20. The applicant has failed in her pursuit and the Respondents have succeeded in defending the claim herein. I do not find any justification to depart from the wisdom of the proviso to Section 27 of the Act and will award costs to the Respondents.
21. In the final analysis, the orders that commend to me are the following;
- i. That the Application and reference herein both dated 11th September 2023 are dismissed.
 - ii. That the Applicant will pay mesne profits to the Respondents at Kshs.642,000/-.
 - iii. The Applicant will pay costs of both the application and the reference assessed at Kshs.30,000/-.

Those are the orders of the court.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF APRIL, 2024.

HON. NDEGWA WAHOME - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Judgement delivered in the absence of the parties. Registry to notify the parties.

HON. NDEGWA WAHOME - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

