



**Kariuki v Githio (Tribunal Case E438 of 2023) [2023] KEBPRT 473 (KLR)
(Commercial & Admiralty) (29 August 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 473 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
COMMERCIAL AND ADMIRALTY
TRIBUNAL CASE E438 OF 2023
A MUMA, AG. CHAIR
AUGUST 29, 2023**

BETWEEN

CAROLINE WAIRIMU KARIUKI APPLICANT

AND

MOHAMED YUSUF GITHIO RESPONDENT

RULING

A. Parties And Representatives

1. The applicant Caroline Wairimu Kariuki is the tenant and has rented space for business in the suit property erected on Plot Number Dagoretti/Riruta/74 (hereinafter the “tenant”).
2. The firm of Kirwa Koskei Advocates LLP represents the tenant in this matter.
3. The respondent Mohamed Yusuf Githio is the landlord and the registered owner of the suit property and had rented out the space on the suit premises to the tenant.
4. The firm of LN Muchira & Co Advocates represents the Landlord in his matter.

B. Background Of The Dispute

5. The landlord and the tenant entered into a lease agreement on February 16, 2018 where the landlord agreed to lease a portion of the land Dagoretti/Riruta/74 to the tenant/applicant for a period of 5 years. As per the agreement the Tenant was to pay a monthly rent fee of Kenya Shillings Twenty Thousand Only (Kshs. 20,000).
6. On 2019, the tenant/ applicant and the landlord agreed to amend the terms of the lease agreement reducing the monthly rent amount from Kenya Shillings Twenty Thousand (Kshs 20,000) to Kenya



Shillings Fifteen Thousand (Kshs 15,000) per month and also extending the lease term from January 30, 2023 to April 25, 2023.

7. The tenant was served with notice of cessation of lease dated January 17, 2023 that indicated that the term of the lease ended on April 25, 2023. It further stated that the landlord would not extend and or renew the lease as he had bequeathed the premises to his daughter who was to take possession on the month of April.
8. Consequently, the tenant filed a reference dated April 25, 2023 opposing the notice of termination of tenancy served upon him by the landlord.

C. The Tenant's Claim

9. The tenant/ applicant filed a reference dated April 25, 2023 to the tribunal stating that the notice seeking to terminate tenancy issued by the landlord was not in the prescribed form.
10. The tenant avers that the landlord issued a termination letter doubling up as a notice to vacate the premises on or before April 23, 2023 violates Section 4(2) of the [landlord and tenants \(Shops, Hotels and Catering Establishments Act](#) (Cap 301) in so far as the notice period is concerned.
11. The said letter dated January 17, 2023 was issued by the landlord and it indicated that tenancy would cease effectively.

D. The Landlord's Claim

12. The landlord claims that on April 26, 2019 the landlord and the tenant entered into a supplementary lease agreement which reduced the rent from Kenya Shillings Twenty Thousand (Kshs 20,000) to Kenya Shillings Fifteen Thousand (Kshs 15,000) and the term of expiry was extended to April 24, 2023 instead of January 30, 2023.
13. It is the landlord's case that the tenant continuously disregarded the terms of the supplementary lease agreement by defaulting in rent payment for the months of May, June, August and September, 2019 prompting him to write to the tenant to through his advocates demanding that she makes due of the rent arrears.
14. The landlord avers that the letter issued to the tenant dated January 17, 2023 was to remind the tenant of the terms of the supplementary lease agreement dated April 26, 2019.
15. It is the landlord's case that vide the letter, his intention was to notify the tenant that he did not intend to renew the lease after its expiry as he bequeathed the premises to his daughter. The landlord avers that letter was a mere reminder of the terms of the lease agreement and not a termination notice as claimed by the applicant.

E. Jurisdiction

16. The jurisdiction of this tribunal is not in dispute.

F. List Of Issues For Determination

17. The issues raised for determination are as follows;
 - a) Whether the notice of cessation of lease dated January 17, 2023 issued to the tenant and the reasons advanced are valid and should be upheld?



F. Analysis & Determination

18. The application and the affidavit filed by the tenant/applicant raises fundamental issues discussed herein below:

Whether the Notice of Cessation of Lease dated January 17, 2023 and issued to the Tenant is valid and should be upheld?

19. The tenant claims that the landlord issued a letter seeking to terminate tenancy which also required that she vacates the suit premises on or before April 25, 2023. The Landlord on the other hand contends that the same was issued to remind the tenant of the terms of the lease agreement between the landlord and the tenant which was set to expire on April 25, 2023.
20. The evidence tendered before this honourable tribunal indicates that the supplementary lease agreement dated April 26, 2019 between the landlord and the tenant herein was to subsist for a period of four years, that is between April 26, 2019 to April 25, 2023.
21. The tenant disputes the notice period given by the landlord. We note that the letter / notice of cessation of Lease issued by the landlord was issued on January 17, 2023 and the same was to take effect on April 25, 2023. The landlord cited reasons that he was bequeathing the premises to his daughter and the same has not been disputed by the tenant/applicant.
22. Section 4(2), (4) of the [Land and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Chapter 301 Laws of Kenya states that:

Landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form. No tenancy shall take effect until such date, not being less than two months after the receipt thereof by the receiving party.

23. From the foregoing, it is clear that a notice to terminate or alter the term of a controlled tenancy must be issued not less than two months to the tenant and the same must indicate valid reasons for such termination.
24. The evidence tendered before this honourable tribunal indicates that the landlord complied with the aforementioned provision as the termination notice was issued on January 17, 2023 and the same was to take effect on April 25, 2023. I have examined the validity of the notice of cessation of the lease issued and I hold that the same is valid in relation to the period.
25. As regards the validity of the reasons advanced by the landlord, they cited that he was bequeathing the premises to his daughter and the same has not been disputed by the tenant/applicant. By virtue of this, the reasons are also upheld.
26. Having perused the file, I note that the reference was filed on April 25, 2023. This is after having been served with the notice on January 17, 2023. This is then in contravention of section 4 (5) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\)](#) which provides that the receiving party of a notice (the tenant in this case) should notify the requesting party in writing within one month after the date of receipt of the notice whether or not he agrees to comply with the notice.
27. The tenant herein did not at any point raise an objection to the notice of cessation issued until April 25, 2023 which is way past the time is required to raise an objection by statute. Additionally, the tenant



did not also apply for leave to file the reference out of time or seek for an extension of time within which to file the reference.

28. In addition, I note that the agreement between the parties expired on April 25, 2023 as per the supplementary lease agreement between the parties, the tribunal cannot therefore extend the term of the agreement as it cannot rewrite the same on behalf of the parties. The parties are bound by their agreement. The tribunal cannot therefore seek to establish a tenancy relationship that has already lapsed unless with very good reason which I do not see in this case as the tenants reference appears to be out of time and no extension of time has been sought.

F. Orders

- a. The upshot is that the tenant's reference and application dated April 25, 2023 is hereby dismissed and the Notice of Cessation of Lease dated January 17, 2023 upheld as the lease has expired.
- b. The tenant shall deliver vacant possession on or before September 30, 2023 failure to which the landlord shall break in and take back possession.
- c. The OCS Dagoretti Police Station to ensure compliance.
- d. Each party shall bear their own Costs.

HON A. MUMA

AG CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 29TH DAY OF AUGUST 2023 IN THE PRESENCE OF KIRWA FOR THE TENANT AND PATROBA HOLDING BRIEF FOR MUCHIRA FOR THE LANDLORD.

HON A. MUMA

AG CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

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