



**Thuita v Njeri (Tribunal Case E726 of 2022)**  
**[2023] KEBPRT 37 (KLR) (30 January 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 37 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**TRIBUNAL CASE E726 OF 2022**  
**GAKUHI CHEGE, VICE CHAIR**  
**JANUARY 30, 2023**

**BETWEEN**

**FRANCIS WAHOME THUITA ..... TENANT**

**AND**

**ESTHER NJERI ..... LANDLORD**

**JUDGMENT**

1. The landlord issued a tenancy notice dated 20<sup>th</sup> June 2022 seeking to terminate the tenant's tenancy over plot no. B2, Kayole with effect from 1<sup>st</sup> September 2022 on the ground that she wants to use the business premises for personal reasons for not less than one year.
2. Being opposed to the notice, the tenant filed the instant reference on 14<sup>th</sup> August 2022. On 29<sup>th</sup> August 2022, directions were issued for parties to comply with Order 11 of the *Civil Procedure Rules* by filing and exchanging witnesses statements and documents intended to be relied upon at the hearing of the reference within 30 days thereof.
3. In compliance with the said order, the tenant filed his witness statement dated 23/9/2022 and a list of documents of the same date. The tenant through the said statement contends that he has been a tenant of the landlord in the suit premises for several years currently paying a monthly rent of Kshs.18,000/-.
4. On or about March 2022, the landlord served a notice of increment of rent by Kshs.3,000/- with effect from 1<sup>st</sup> June 2022. The notice was produced as document no. 1 in the list of documents. However, the tenant declined to increase rent as the action was not sanctioned by the Tribunal despite the premises being controlled.
5. According to the tenant, the rent being charged by the landlord does not match the premises in terms of condition and size as shown in photographs produced as exhibit 2. It is against the said background that the landlord served the tenant with the notice to terminate tenancy subject matter hereof.



6. Although, the termination notice states that the landlord wished to use the premises, it is the tenant's case that it was issued on account of his objection to the rent increment as there is another business premises in the same building which has been vacant for a period of time.
7. The tenant testified that he was up to date in rent payment and had no arrears. He pays rent to the landlord's account and he produced as exhibit 3 deposit receipts thereof. The landlord is accused of failing to keep or issue a rent book to the tenant.
8. The tenant denies using abusive language or disrespecting the landlord. He also denies inciting other tenants not to pay rent neither does he admit keeping suspicious company as asserted by the landlord. The tenant therefore prays for the landlord to be restrained from evicting him and to stop him from increasing rent for the suit premises.
9. In cross-examination during the hearing, the tenant stated that the landlord had no right to terminate tenancy for refusal to increase rent. He also stated that the other tenants were not served with termination notices as they agreed to increase rent.
10. On her part, the landlord filed a witness statement and list of documents dated 21/9/2022. She states that she issued notices to all tenants in her business premises to the effect that the monthly rent would be increased by Kshs.3000/-. The tenant's rent was to increase from Kshs.18,000/- to Kshs.21,000/-. Upon receipt of the notice, the tenant ignored or refused to pay any rent at all. He became verbally abusive to the landlord stating that he would not pay the increment.
11. From March to June 2022, the landlord wrote that she had not received any rent from the tenant as a result of which there was accumulated arrears of Kshs.72,000/-. The tenant is accused of keeping company of very suspicious looking men at his shop who are a threat to other tenants and people in that area. As a result, the business premises had acquired a bad name.
12. The landlord states that she wanted the business premises for own use on account of breach of tenant/ landlord relationship.
13. The landlord has annexed two (2) rent payment receipts in respect of the months of February and March 2022. She also filed a further list of documents dated 24<sup>th</sup> October 2022 to which she attached a statement of her cooperative Bank account no. 0110960132600 from 1<sup>st</sup> June 2022 to 28<sup>th</sup> September 2022.
14. In cross-examination, the landlord stated that she did not allege that the tenant does not pay rent. She confirmed that there was a vacant room in the business premises but it is already taken up by an unnamed person who is abroad but pays rent.
15. Both counsels filed written submissions which I shall consider together with the issues for determination listed hereunder.
16. Based on the pleadings, I am required to determine the following issues:-
  - a. Whether the landlord's notice to terminate tenancy ought to be approved or dismissed.
  - b. Who is liable to pay costs of the reference?
17. The landlord issued her notice pursuant to Section 4(2) of [Cap. 301](#), Laws of Kenya as read with Section 7(1)(g) which provides that "on the termination of the tenancy, the landlord himself intends to occupy for a period of not less than one year, the premises comprised in the tenancy for the purposes or partly for the purposes of a business to be carried on by him therein or at his residence".



18. According to the tenant, the said notice came not on the heels of another notice by the landlord seeking to increase his rent by Kshs.3000/- with effect from 1<sup>st</sup> June 2022. All the other tenants are said to have complied but the Tenant herein objected to the increment. The termination notice was issued on 20<sup>th</sup> June 2022.
19. According to the landlord counsel's submissions, the termination notice was necessitated by the tenant's unbecoming conduct of inciting other tenants not to pay rent to the landlord even after the latter withdrew the increment notice issued to him. The tenant is also accused of being a general nuisance, and a threat to security of the landlord. The nuisance it is submitted, amounts to a breach of the landlord/tenant relationship.
20. According to the landlord no sufficient cause, ill will or breach on the part of the landlord, has been demonstrated by the tenant to warrant allowing the reference. It is submitted that no prejudice will be suffered by the tenant if he gives up vacant possession because by its very nature, a landlord/tenant relationship will come to an end.
21. It is submitted on the authority of *Kasturi Limited v Nyeri Wholesalers Limited* (2014) eKLR that the tenant ought to give up possession of the suit premises. The landlord prays that the reference be dismissed with costs.
22. On the other hand, the tenant in his submissions cites the principles espoused in the cases of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358 & *Mrao Ltd v First American Bank of Kenya Limited & 2 Others* (2003) eKLR on the principles considered in granting equitable reliefs. I doubt that the cases are relevant for the purposes of this reference as no order of injunction is sought herein.
23. According to the tenant, the landlord issued the termination notice after he declined to increase rent pursuant to a defective notice that did not conform with the prescribed format under Section 4(2) of *Cap. 301*, Laws of Kenya. It is therefore submitted that the notice to terminate was issued on the basis of the said refusal to increase rent as there was another vacant room which the landlord can use for her purpose. The said room is next to the tenant's premises which was confirmed by the landlord in cross-examination.
24. According to the tenant, the intention of the landlord is not genuine and the sole intention is to evict the tenant for refusal to increase rent. Allegations of incitement of other tenants are denied as he was paying his own rent.
25. I have looked at the evidence by both parties and submissions and I wholly agree with the tenant that the notice to terminate tenancy was precipitated by his refusal to increase rent and not the need for the landlord to use the suit premises for personal business. In fact, the landlord has not explained which business or use she intended to put the premises and that the need was immediate and not later. Her source of funds and business plan was not demonstrated. Coupled with the argument by the tenant that there was a vacant room next to his shop which the landlord did not give details of alleged tenant, I am convinced that she is not genuine in seeking vacant possession.
26. It will be a travesty of justice if I allowed the landlord to evict the tenant in the backdrop of what the tenant advanced in this case to demonstrate that the desire to take possession on the part of the landlord is not motivated by good faith and is merely intended to hit back on him for refusing to increase rent. Allowing the notice would defeat the very purpose for which this Tribunal was established. The protection afforded by *Cap. 301*, Laws of Kenya to tenants against illegal eviction will be defeated if I upheld the Landlord's allegations and termination notice issued herein. The same is a candidate for dismissal.



27. As regards costs, the same are in the Tribunal's discretion under section 12(1) (k) of [Cap. 301](#), Laws of Kenya but always follow the event unless for good reasons otherwise ordered. I have no reason to deny the tenant costs of the reference.
28. In conclusion, the final orders which commend to me in this case are as follows:-
- a. The landlord's notice to terminate tenancy dated 20<sup>th</sup> June 2022 is disapproved and consequently dismissed.
  - b. The tenant's reference dated 14<sup>th</sup> August 2022 is allowed with costs.
  - c. The tenant's costs are assessed at Kshs.20,000/- which shall be offset against the rent account if not paid within 14 days hereof.
  - d. The landlord shall not issue a similar notice within the next (12) months as stipulated under Section 9(3) (b) of [Cap. 301](#), Laws of Kenya.

It is so ordered.

**RULING SIGNED DATED & DELIVERED THIS 30<sup>TH</sup> DAY OF JANUARY 2023.**

**HON. GAKUHI CHEGE**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

**Ruling delivered in the presence of:**

Miss Monyangi for the Landlord.

Miss Wambui for the Tenant

