



**Muriithi v Kibuchi (Tribunal Case E025 of 2024)
[2024] KEBPRT 1105 (KLR) (1 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1105 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E025 OF 2024
A MUMA, MEMBER
AUGUST 1, 2024**

BETWEEN

MARY WAMBUI MURIITHI TENANT

AND

JOHN MATHENGE KIBUCHI LANDLORD

RULING

A. Parties and their Representatives

1. The Applicant, Mary Wambui Muriithi (the “Tenant”), is a tenant of shops on property situate at Kiandegwa Village within Kirinyaga County (the “suit premises”).
2. The Tenant appears in person in this matter.
3. The Landlord, John Mathenge Kibuchi, is the registered proprietor of the suit premises and hence the Landlord (the “Landlord”).
4. The Firm of Kanga & Company Advocates represents the Landlord in this matter.

B. Background of the Dispute

5. Through a Reference and Notice of Motion Application dated 8th April 2024 canvassed through Certificate of Urgency of even date, the Tenant moved this Honourable Tribunal seeking the following orders inter-alia: orders certifying the matter as urgent, restricting the Landlord from evicting, and harassing the Tenant from the suit premises.
6. Upon perusal of the Application, this Honourable Tribunal on 9th April 2024 issued Orders fixing the matter for hearing on 16th April 2024 and directing the Tenant to serve the said Reference and Application upon the Landlord and thereafter, file a return of service.



7. In response to the Tenants' Application, the Landlord filed a Replying Affidavit dated 13th April 2024 and a counterclaim dated 24th May 2024.
8. It is the Tenant's Reference and Application both dated 8th April 2024 AND the Landlords Counter claim that are the subject of this ruling.

C. Tenant's Case

9. The Tenant's Application is based on the grounds that the Landlord is threatening to evict her from the suit premises without proper reasons. The Tenant claims that on several occasions, the Landlord has been harassing him and her customers by overturning tables while customers are around which she has always reported to the Police.
10. It is the Tenant's case that the Landlord has been issuing her with verbal notices to vacate yet she has paid up the rent and is up to date with the said rent payments and stands to suffer irreparable loss and damage if the orders sought are not granted.

D. Landlords' Case

11. The Landlord, vide a Replying affidavit dated 13th April 2024, denies issuing the Tenant with verbal notices to vacate and avers that he has not made any attempts to evict her from the suit premises.
12. The Landlord claims that the tenancy agreement between him and the Tenant lapsed on 31st December 2023 after which he approached the Tenant with the intention of renewing the lease. However, the Tenant abused and threatened him with legal suits if he stepped into her business again.
13. The Landlord states that he reported the matter to the Assistant Chief of Kimuri Sub location but the Tenant failed to show up for a meeting. Instead, the Tenant sent her agents with forged agreement stating that the tenancy agreement was for a period of 5 years was never allowed to have copies of the said agreements, following which the Landlord reported the matter to Kiandegwa Police Post in Ciagini Police.

E. Jurisdiction

14. The Jurisdiction of this Honourable Tribunal is not contested by either party and therefore is not in dispute.

F. List For Issues For Determination

15. Having carefully perused the Pleadings presented before this Honourable Tribunal by the parties, it is therefore my respectful finding that the sole issue that falls for determination is; Whether the Tenancy ought to subsist?.

G. Analysis and Determination

16. It is not in dispute that there existed a Landlord Tenant relationship between the parties herein pursuant to a tenancy agreement dated 7th October 2021 for a period of two years, effective on 1st December 2021 and which was to lapse on 31st December 2023.
17. The dispute herein arose at the end of the aforementioned tenancy and since then, the parties have seemingly failed to agree on whether or not the tenancy should be renewed, despite the Tenant still being in occupation of the premises.



18. This Court takes note of the Tenant's assertions that the Landlord renewed the lease for a further period of Four and a half years running from 1st January 2024 to 31st July 2024 and a further Three Years running from 1st August 2028 to 1st August 2031, and which agreements are dated 3rd December 2021 and 13th February 2023 respectively.
19. The aforementioned agreements produced by the Tenant further indicate that the Landlord received KShs. 108,000.00 and KShs. 72,000.00 respectively but do not indicate the purpose of the amount and the rent payable per month.
20. These two agreements have been disputed by the Landlord, who in his counterclaim dated 6th May 2024 asserts that he did not renew the lease and claims that the said agreements are a forgery, a matter that he reported to Kiandegwa Police Post on 20th February 2024 and issued with OB No. 06/20/02/2024.
21. While I acknowledge that this Court's Jurisdiction does not extend to criminal matters such as forgery, I have taken time to peruse the aforementioned tenancy agreements. It is my considered opinion that there are glaring inconsistencies that cast doubt on the validity of the said agreements. For instance, I fail to understand why an agreement entered into in January 2024 would be dated 3rd December 2021.
22. Further, I fail to comprehend why the parties would execute a future lease for a period of 3 years, running from 1st August 2028 to 1st August 2031 shortly after executing a lease for a period of Four and a half years. It is my considered opinion that these agreements are not valid prima facie.
23. The Tenant has also not provided any proof that her rent payment is up to date and that the KShs. 108,000.00 and KShs. 72,000.00 was actually paid to the Landlord.
24. It is evident that since December 2023, the Tenant has remained in occupation of the premises and failed to pay rent, thereby denying the Landlord a return on his investment in putting up the suit premises.
25. The lease having expired in 2023, the Tenant ought to have requested and negotiated for a renewal of the lease and continued to pay rent or vacated and allowed the Landlord to let the premises to another person.
26. On the issue of rent arrears in the Landlord's counterclaim, the Court is not in a position to determine the amount owing for the reason that the Landlord failed to attach a statement of account or rent book to demonstrate the same.

H. Orders

27. In the upshot the Tenant's Application dated 8th April 2024 is hereby dismissed in the following terms:
 - a. The Landlord's counterclaim dated 6th May 2024 is hereby allowed.
 - b. The Tenant to pay the outstanding arrears by 15th August 2024 and grant vacant possession to the Landlord.
 - c. OCS Ciagiini Police Station to ensure compliance of this Order.
 - d. Each party to bear their own costs.

HON A. MUMA - MEMBER

BUSINESS PREMISES RENT TRIBUNAL



RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 1ST DAY OF AUGUST 2024 IN THE PRESENCE OF MARY WAMBUI, THE TENANT IN PERSON AND NJERI HOLDING BRIEF FOR KANJA FOR THE LANDLORD.

HON A. MUMA - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

