



**Mwangi v Njuguna (Tribunal Case E002 of 2024)  
[2024] KEBPRT 826 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 826 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E002 OF 2024  
CN MUGAMBI, CHAIR  
JUNE 7, 2024**

**BETWEEN**

**MICHAEL MAINA MWANGI ..... TENANT**

**AND**

**LUCY NJOKI NJUGUNA ..... LANDLADY**

**RULING**

1. The Tenant's Application dated 22.03.2024 seeks an order restraining the Landlady from evicting the Tenant from the business premises situated on L.R. No. 14924/3 situate in Ruiru Town/2016, hereinafter "the suit property" or from in any way interfering with the Tenant's business.
2. The Tenant has deponed in his affidavit in support of the motion that he entered into a lease agreement with the landlord on 01.02.2019 for a period of five (5) years at an average agreed rent of Kshs. 30,000/= per month renewable after every two (2) years.
3. The Tenant has also deponed that at the time he was taking up the premises, he spent the sum of Kshs. 3,600,000/= in improving the premises by erecting a store, wall, levelling the ground and back filling.
4. The Tenant has also deponed that on 04.03.2024, the Landlady instructed auctioneers to levy distress over non-existent and disputed rent arrears of Kshs. 605,000/= and also informed the Tenant to vacate the suit premises without any valid reasons.
5. The Tenant who depones he is a protected Tenant therefore requests that the accounts be reconciled since the Tenant pays his rent to an Estate agent while the letter of distress was directly issued by the Landlady.
6. The Respondent on her part admits to entering into a lease agreement with the Applicant/Tenant on 01.02.2019 and further depones that the Tenant has not been paying rent as and when it fell due and has thus accumulated rent arrears amounting to Kshs. 605,000/=.



7. The Landlady further depones in her Replying affidavit that contrary to the lease agreement, the Tenant fenced off an extra 50ft x 100ft plot without the knowledge and/or consent of the Landlady.
8. The Landlady also contends that the lease between the parties which was for a period of five (5) years from 01.02.2019 terminated on 01.02.2024, and therefore the Tenant is not a protected Tenant.
9. The Respondent having deponed and submitted that the Tenant is no longer a protected Tenant, the Tribunal has at the very outset to determine whether indeed the Tenant is a protected Tenant or not and whether therefore, the Tribunal has the jurisdiction to hear and determine this matter.

This is so because under the provisions of Section 12(4) of Cap 301,

“In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the Landlord or the Tenant and may make such order thereon as it deems fit.”

10. The lease agreement governing the relationship between the parties herein is the one dated 01.02.2019. The commencement date in the agreement is stated to be 01.03.2019 and the agreement being for a period of five (5) years, the same expired on 01.03.2024.
11. The Tenant has not demonstrated that he has continued to pay rent to the Landlady after the expiry of the lease agreement and the Landlady has also not admitted receiving any such rent from the Tenant after the expiry of the lease agreement. On the contrary, the Landlady has held onto the assertion that the Tenant has been and remains in rent arrears.
12. In these circumstances, the tenancy between the parties expired by effluxion of time and the court cannot extend that time if the parties do not demonstrate by their own conduct that the lease time/period has been impliedly renewed or extended. In the tired often cited statement, courts cannot make contracts for parties but will give effect to the parties clear intentions.

In the case of; Jiwaji vs Jiwaji [1965] EA, the court held;

“The courts will not of course make contracts for the parties but they will give effect to their clear intention.

The court went further to state,

But where there is no ambiguity in an agreement, it must be construed according to the clear words actually used by the parties and it would be quite wrong to adopt a different construction or to imply a term to the contract effect.”

13. Under clause 3 of the lease agreement, the lease was to continue for a period of five (5) years with an option to renew the term as set out in clause 5 of the lease.

Under clause 5 thereof, if the Tenant wished to have the lease extended or renewed, he was required to issue a notice of renewal in writing to the Landlord in not less than two (2) months before the expiry of the term. In this case, the Tenant has not demonstrated that he issued a renewal notice to the Landlady. The Landlady on her part, by her letter of 26.09.2023, informed the Tenant that she would not be renewing the lease between the parties because she wished to use the premises for her own use upon the expiry of the lease on 29.02.2024.



14. Absent a renewal of the lease, the Tenant has no option but to vacate the premises. The court of Appeal in the case of; Kasturi Limited vs Nyeri Wholesalers Limited [2024] eKLR, in this regard held as follows;-

“On the counter claim for vacant possession of the premises, we cite with concurrence the dicta by Lord Halisbury in Jacob vs Boots Distillery Co. 85 LTR at page 262 where he stated that, “there are somethings too plain for argument. In the present case, it is proven that the tenancy agreement between the parties expired on 14.04.2009 and has never been renewed. It is also plain that the Appellant received a notice for non-renewal of the tenancy. We concur with the learned Judge that the Appellant has no triable issue in the counter claim for vacant possession. It is the duty of courts to ensure that no individual is prevented from taking possession and/or enjoying their property. A Tenant cannot impose or force himself/herself/itself on a Landlord. In the instant case, when the lease between the parties expired, it was incumbent upon the Applicant to give vacant possession.”

15. It is plain also in this case that the lease between the parties was never renewed and the Tenant continues to occupy the premises without paying rent. The tenancy cannot be said to be a controlled tenancy as clearly no form of tenancy indeed exists between the parties. Upon the expiry of the lease, the Tenant became no more than a trespasser upon the suit premises. It therefore follows that the Tenant is not a protected Tenant and the Tribunal has no jurisdiction to hear and determine this matter.
16. Consequently, the Reference and the Application by the Tenant to the Tribunal in this matter are dismissed with costs to the Landlady.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7<sup>TH</sup> DAY OF JUNE, 2024.**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Mr. Thuku for the Tenant and in the absence of the Landlady and Counsel

