



**Kilongosi v Khaemba (Tribunal Case E041 of 2023)  
[2024] KEBPRT 575 (KLR) (22 April 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 575 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E041 OF 2023  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
APRIL 22, 2024**

**BETWEEN**

**JOSEPH K. KILONGOSI ..... APPLICANT**

**AND**

**GREVENE WAMALWA KHAEMBA ..... RESPONDENT**

**JUDGMENT**

1. Though this matter was listed as coming up for Ruling, the same is for judgment pursuant to the directions taken in the matter on the 14<sup>th</sup> November 2023. However, in the interlude, the Landlord filed the notice of motion application dated 7<sup>th</sup> February 2024 and this court's findings in this judgement will incorporate its determination on the said notice of motion.
2. The present suit was triggered by the notice of termination of tenancy issued to the Tenant and which is dated the 26<sup>th</sup> January 2023 and which was to take effect on the 1<sup>st</sup> April 2023. The grounds for the termination are that:-

“Tenant has refused payment of rent and electricity bill. He has a rent arrears of Kshs.15,000/- plus electricity bill of Kshs.2,198/-. Effort to recover the arrears and electricity bill has failed. I also want to use the business Premises for my own use. I request the rent tribunal court and OCS Webuye Police Station to order the Tenant to pay all the rent arrears plus electricity bill and vacate the business premises to acquire vacant possession for my own use”.
3. In answer to the notice, the Tenant filed the present reference dated 20<sup>th</sup> March 2023 and simply requested the tribunal to:-

“Investigate the matter and determine the issues involved”.



4. The Landlord thereafter filed the notice of motion Application dated 7<sup>th</sup> February 2024 and sought for the following reliefs:-
- i. Rent arrears in the sum of Kshs.96,000/- being accumulated rent arrears,
  - ii. Outstanding trade permits due to the County Government of Bungoma in the sum of Kshs.37,200/- for the year ending 2022/2023.
  - iii. Outstanding land rates in the sum of Kshs.3,740/-.
  - iv. Outstanding KPLC electricity bills in the sum of Kshs.8,700/-.
  - v. Repair of furniture in the sum of Kshs.3,740/-.
5. In response, the Tenant filed the replying Affidavit sworn on the 5<sup>th</sup> March 2024 and subsequently the submissions dated the 15<sup>th</sup> March 2024.
- The pleadings then closed with the landlord having opted not to file submissions.
6. The cases for both the Landlord and the Tenant can be summarized as follows:-

**A. Case for the Landlord:-**

- i. The Tenant was a serial rent defaulter and by February, 2024 he was in rent arrears at Kshs.96,000/-.
- ii. He was to pay business license, fees, electricity bills and land rents which responsibilities he had also abdicated:-
- iii. He therefore needed him out of the demised premises for non payment of rent, breach of contract and that he wanted the same for his own use.

**B. Tenant's case,**

- i. Landlord had no capacity to collect levies for the County Government.
  - ii. He had disconnected power and therefore crippled his business.
  - iii. He had paid all the electricity bills before disconnection and it is the landlord who had refused to collect the rent.
  - iv. The landlord's application and the notice of termination were not in compliance with the law.
7. From the foregoing and having perused all the materials on record, the issues for determination in this matter are the following:-

A. Whether the notice of termination dated 26<sup>th</sup> January 2023 is lawful.

B. Who should bear the costs of the suit.

**Issue No. A- Whether the notice of termination dated 26<sup>th</sup> January 2023 is lawful.**

8. This notice culminated in the reference dated 20<sup>th</sup> March 2023. If the notice is held to be lawful, then the reference will fail and vice versa. The notice is anchored on three grounds:-
- i. Failure to pay rent.
  - ii. Breach of covenant by Tenant
  - iii. Desire by the landlord to convert the premises to his use.



9. Section 7(1) (b) of the Act provides as a ground for termination of tenancy as follows:-

“That the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable”.

10. It is not in contest that at the time the notice of termination was issued on the 26/1/2023, the Tenant was in rent arrears of Kshs.15,000/-. This is equivalent to 3 months rent pursuant to the lease agreement dated 4<sup>th</sup> March 2022. That entitled the landlord to terminate the tenancy. This was compounded by the fact that as at 7<sup>th</sup> February 2024, the rent in arrears was Kshs.96,000/-. A clear indication that the Tenant was not meeting his cardinal obligations in the relationship.

11. According to lease agreement between the parties dated 4<sup>th</sup> March 2022. The Tenant covenanted the following:-

“that SBP liquor permit, Kshs.32,000/- be shared equally. The monthly KPLC electricity bill be paid by the lessee”.

From the evidence on record, the Tenant has not rebutted in anyway the landlord’s contention that he has not paid the electricity bills with the KPLC at Kshs.8,700/- nor the single business permit liquor license though at a half of the license fees charged at Kshs.18,600/- by the County Government of Bungoma.

12. That is in breach of the said lease agreement and in contravention of Section 2(1)(b) (ii) which provides the following as a ground to permit termination:-

“it contains provision for termination, otherwise than for breach of covenant within, five years from the commencement thereof” it is therefore the inherent right of the landlord to terminate the lease agreement for the reason of breach of covenant as herein above provided.

13. The last ground of the termination is that the landlord intends to apply the demised premises for his personal use. He has not however indicated what business he is to run at the premises, that it was for a duration of more than year or even provide evidence of financial foundation for establishment of such business.

14. I am not convinced that the landlord has shown any clear or valid intention to use the premises for his own use. Indeed he has not satisfied the requirements of Section 7(1) (g) of the Act which provides that:-

“Subject as hereinafter provided that on the termination of the tenancy the landlord himself intends to occupy for a period of not less than one (1) the tenancy for the purposes, or partly for the purposes of a business to be carried on by him therein or at his residence”.

15. Therefore and looked in the light of the ratio decidendi in the case of Auto Engineering Ltd – vs- M. Gonella & Co. Limited (1978) e KLR this ground of termination fails. However in the overall, the notice of termination dated 26<sup>th</sup> January 2023 is found to be lawful and is upheld.

16. From the notice of motion application dated 7<sup>th</sup> February 2024, I find that the rent in arrears as at February, 2024 was Kshs.96,000/-. If the rents of March and April 2024 are included, it would sum up to Kshs.106,000/- at Kshs.5,000/- per month. This figure is not contested and will allow the same.



17. The single business permit liquor license fees payable to Bungoma County Government is Kshs.18,600 as per the landlords own annexure JKK-5. The half share payable by the Tenant is therefore Kshs.9,300/- and I will allow the same.
18. In the lease agreement, there is no requirement that the Tenant pays land rates, I would therefore dismiss the claim for Kshs.3,740 to that end. Though there was provision in the lease agreement that the Tenant would,
- “Maintain and keep safely all the items listed separately for use and that damages or losses be repaired or replaced accordingly”.
- There is no evidence of such damages or losses at Kshs.3,250/-. The Landlord never tendered any evidence to support that claim. Section 107 of the Evidence Act provides that:-
- “Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”.
- I would therefore also dismiss that claim.
19. There is no contention that the Tenant was to cater for electricity bills and that as at February, 2024 the same stood at Kshs.8,700/-. I will therefore allow the claim. In sum I would allow the claim for rent arrears at Kshs.106,000/-, liquor. License fees at Kshs.9,300/- and electricity bills at Kshs.8,700/- making a total of Kshs.124,000/-.

**C. Who should bear the costs of this suit.**

20. The proviso to Section 27 of the civil Procedure act provides that costs should ideally follow the event. In the present suit, the landlord has succeeded. I do not have any justification to deny him costs. I will award him the same.
21. In conclusion, I make the following orders:-
- i. That the Notice of termination of tenancy dated 26/1/2023 is lawful and the same is upheld.
  - ii. That the Tenant will forthwith vacate the demised premises and in the case of non-compliance, he be evicted with the assistance of the OCS Webuye Police Station.
  - iii. That the Landlord is awarded Kshs.124,000/- being for rent arrears liquor license fees and electricity bill to be recovered by way of levy of distress or otherwise.
  - iv. The landlord is awarded costs assessed at Kshs.20,000/-.

Those are the orders of the court.

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

**HON. NDEGWA WAHOME, MBS**

**PANEL CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

**Judgement delivered in the presence of Mr. Arwanda for the Landlord.**

**Mr. H.P. Wamalwa for the Tenant absent.**

**HON. NDEGWA WAHOME, MBS**



**PANEL CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON. JOYCE MURIGI**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

