



**Kinyua v Mutevu (Tribunal Case E042 of 2023)
[2023] KEBPRT 1171 (KLR) (Civ) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1171 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E042 OF 2023
CN MUGAMBI, CHAIR
JULY 21, 2023**

BETWEEN

IRENE WANGITHI KINYUA PLAINTIFF

AND

ROBERT MUTEVU DEFENDANT

RULING

Introduction

1. The landlady's application dated 3.3.2023 seeks orders that the tenant voluntarily vacates the suit premises failing which an order of eviction be issued against him.

The Landlord's depositions

2. The landlady has sworn an affidavit in support of the application wherein she has deposed that she served the tenant with a two months' notice terminating the tenancy and the tenant has not heeded to the notice.
3. The landlady has further deposed that the notice required the tenant to state whether he agreed with the contents of the notice within one month but the tenant failed to do so.
4. The landlady further deposes that she erroneously dated the notice 26.5.2023 instead of 26.6.2023 which only amounted to a typographical error.
5. The landlady further deposes that she did not demolish any toilet as there was none in the suit premises which led the Public Health officers to notify the tenant to vacate the premises.
6. That the tenants have vacated the premises leaving their properties unsecured.



The Tenant's depositions

7. The tenant's replying and further affidavits may be summarized as follows hereunder:-
- a. That the tenant has never been served with any landlady's notice to terminate tenancy and the tenant has not been served with the affidavit of service of the notice to terminate tenancy.
 - b. That the landlady has been threatening to evict the tenant illegally.
 - c. That on 25.5.2023, the landlady served the tenant with a notice to terminate tenancy and which defective notice was to take effect on the same day.
 - d. That on 25.5.2023, the landlady hired goons who demolished the toilets, disconnected electricity and water, then colluded with Health Officers who later ordered the tenants to close the premises.
 - e. That the tenant has incurred high losses and the landlady ought to be ordered to open the premises, reconstruct the toilet and reconnect back water and electricity.

Analysis and determination

8. The only issue that arises for determination in this application is whether the landlady is entitled to the orders sought in her application.
9. The tenancy notice the landlady wishes to effect is the one dated 20.9.2023 with an effective date of 1.1.2023. The said notice was served upon the tenant as per the affidavit of service drawn and filed by Mr. J.M. Gathiru, process server.
10. I have perused the affidavit and I am satisfied that the tenant was duly served. I have also perused the record and I note that the tenant has not filed any reference under section 6(1) of [Cap 301](#) which effectively means that the tenancy notice took effect from the date indicated therein being 1.1.2023.
11. The tenant in his responses seem to be dealing with a notice to terminate tenancy dated 26.5.2023. This cannot be the notice applicable to the landlady's application which was filed on 17.4.2023 way before the notice dated 26.5.2023.
12. I am therefore satisfied that the tenant was duly served with the landlady's notice to terminate tenancy dated 20.9.2022 and he did not oppose the same by filing the necessary reference.
13. Consequently, the provisions of section 10 of [Cap 301](#) came into being and with effect from 1.1.2023, the tenant herein became a trespasser upon the suit premises.

Disposition

14. In the circumstances, the landlady's application dated 3.3.2023 is allowed with costs to the landlady assessed at Kshs. 20,000/=. Further, the tenant shall vacate the suit premises within the next thirty (30) days, failing which the tenant will be forcefully evicted.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 21ST DAY OF JULY 2023

HON. CYPRIAN MUGAMBI

CHAIRPERSON

21.7.2023

In the presence of;



M/S Irene Wangithi Kinyua -----landlady

In the absence of the tenant

