



**Ngwiri v Wanyange & 2 others (Tribunal Case E142 of 2022)
[2023] KEBPRT 1305 (KLR) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1305 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E142 OF 2022
CN MUGAMBI, CHAIR
JULY 31, 2023**

BETWEEN

PETER NJINO NGWIRI TENANT

AND

JOHN WANYANGE 1ST LANDLORD

NORMAN NJUGUNA 2ND LANDLORD

**LUCY WANGUI CHEGE (SUED AS THE ADMINISTRATORS OF THE ESTATE
OF THE LATE KARIU NYANGE) 3RD LANDLORD**

RULING

1. The tenant's notice of preliminary objection dated 16.6.2023 is majorly brought on the ground that the notice to terminate or alter terms of tenancy dated 18.10.2022 is incompetent having been issued before expiration of twelve (12) months after determination of the previous reference as between the parties and over the same premises. the tenant's objection is also on the basis that the Tribunal has no jurisdiction as Section 9(3) of Cap 301 bars the Tribunal from entertaining the landlord's objection.

Submissions

2. Both parties have filed their respective submissions, I will consider them in this ruling.

Analysis and determination

3. The tenant's submissions is that in BPRT Case No. 13 of 2021, the reference therein was determined on 13.5.2022. The reference in Case No. BPRT 13 of 2021, between the same parties and for the same business/suit premises was filed in opposition to a notice by the landlord to increase rent dated 1.10.2020. in that case, the court found that the landlord's notice dated 1.10.2020 did not conform with the provisions of Section 4 of Cap 301 and was therefore illegal.



4. The instant notice is the one dated 18.10.2022 and the landlord in the said notice seeks to terminate the tenant's tenancy for the reasons that he wishes to occupy the premises for a period of not less than one year.
5. The issue that then arises for determination is whether the landlord can issue another notice to the tenant before the expiry of twelve (12) months from the date of the court's determination in BPRT Case No. 13 of 2021.
6. Section 9(3) of Cap 301 provides as follows:-

“where a Tribunal has made a determination upon a reference, no further tenancy notice shall be given in respect of the premises concerned, which is based on any of the matters affected by the determination-

- a. In the case of assessment of rent, until after the expiration of two years.
- b. In any other case, until after the expiration of twelve months

After the date of the determination unless the Tribunal at the time of the determination specifies some shorter period.

What were the matters affected by the determination in BPRT Case No. 13 of 2021? The notice therein touched on the matter of rent increment and in my view the instant notice which seeks to terminate tenancy on grounds other than increment of rent cannot be a matter affected by the determination in BPRT Case No. 13 of 2021.

7. A proper reading of Section 9(3) clearly points to the interpretation that if one serves a notice to increase rent and the tenant files a reference which is eventually determined, then another notice for the same purpose or on the same grounds cannot be raised before the expiration of two years. Further, if a landlord issues a notice to terminate tenancy on any other grounds, other than rent increment, and the tenant files a reference in opposition to that notice, then, after the court makes a determination on that reference, no other notice on the same grounds may be brought before the expiration of twelve months.
8. Consequently, the only notice to alter or terminate tenancy that the landlord would have been barred from bringing before the expiry of two years is a notice to alter the tenancy by increasing rent.
9. There is absolutely no bar to the landlord bringing a notice to terminate tenancy as he has done in the presence case.
10. I therefore do not find any merits in the notice of preliminary objection by the tenant and the same is dismissed with costs to the landlord.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31ST DAY OF JULY 2023.

HON. CYPRIAN MUGAMBI - CHAIRPERSON

31.7.2023

In the presence of;

Mr. Mwangi for the tenant

Mr. Njoroge for the landlord

