



**Wangatho v Gacheche (Tribunal Case E016 of 2023)
[2024] KEBPRT 805 (KLR) (3 June 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 805 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E016 OF 2023
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
JUNE 3, 2024**

BETWEEN

CHARLES GITHEMO WANGATHO TENANT

AND

MARC TIMOTHY GACHECHE LANDLORD

JUDGMENT

1. The Tenant originated these proceedings by way of the reference dated 16th December, 2023. The same was in answer to the landlord's termination notice dated the 30th November 2022. The reference only requested this court to:-

"investigate the matter and determine the issues involved".
2. The Tenant further filed what he described as Tenant's/applicant's submissions dated 17th July 2023 but which in essence was his statement in support of his case. In it, he claimed that the Termination was not in compliance with the law, that he was up to date on rent payment and that the landlord owed him Kshs.4,335,000/- for unrecovered costs on development of the plot.
3. In the said statement, the Tenant further alleged that the termination notice was irregular as it was dated 30th November 2022 but "filed" on the 30th November 2022. He complained that the landlord had also interfered with his business by closing the rear door which afforded him and his customers access to the washrooms. The landlord was also accused of issuing illegal notices to him.
4. The Tenant later filed what he described as "Reply to supplementary affidavit" sworn by himself on the 9th January 2024. In court, he denied that the landlord Mr. Marc Timothy Gacheche was the owner of the demised premises otherwise known as Plot No. Karatina Town Block 1/145. He alleged that the same belonged to the Landlord's parents.



5. It was his evidence that he developed the premises with the consent of the landlord and that he also got approvals from all the relevant government agencies. The cost of the development was KShs.4,335,000/- which he required to be reimbursed before he could vacate the premises.
6. The Tenant claimed that the landlord did not have the locus standi to issue him with the termination notice as the grant in Nairobi succession 661 of 2018 had not been registered. The Tenant also filed what he titled as “ Notice of objection” dated 5/10/2023. In it he asserted that the Bank statements presented to court by the landlord as evidence of preparedness to “demolish and reconstruct” the premises did not belong to the Landlord.
7. He further asserted that the building plans presented by the Landlord were not approved by the relevant government agencies and therefore of no value. He claimed that all the evidence by way of documents and other materials by the landlord were all false and unfounded.
8. The Tenant further testified as TW1 and reiterated all the averments in his pleadings and contents of his documents. In cross examination by Mr. Kisaka the counsel for the Landlord, he claimed to earn between KShs.20,000/- and KShs.50,000/- from his subtenants on the premises. That he only paid the landlord KShs.20,000/- as rent. He admitted that he did not have any evidence to show that the Landlord had any obligation to refund him the KShs.4,335,000/- allegedly expended on development of the plot. He confirmed having seen the extension of the lease for the premises in favour of the landlord’s late father’s estate.
9. On his part, the landlord in the termination notice dated 30th November 2022 pegged the termination of the tenancy on the following:-

“I intend to demolish or reconstruct the premises comprised in the Tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof and that he could not reasonably do so without obtaining possession of such premises”.
10. The Respondent was to later file his witness statement dated 6th September 2023. In it, he stated that his tenancy with the Applicant had terminated effective the 1st March 2023 by effluxion of time. He needed vacant possession of the premises to enable him demolish and reconstruct the same.
11. Title No. Karatina/block 1/145 was bequeathed to him in succession cause No. 661 of 2018 at Nairobi. He produced a letter of consent by the family to the same effect dated 26th June 2023 addressed to the Deputy Registrar of the High Court of Kenya in-charge of the family Division at Nairobi.
12. The landlord asserted that he had the necessary resources to undertake the proposed demolition and reconstruction of the premises. He further produced building plans which were pending approval by the relevant authorities. He also produced Bank Statements dated 22nd July 2023 in the names of his mother Marie Josee Gacheche.
13. To the Landlord, this demonstrated his readiness and ability to carry out the proposed demolition and reconstruction thereof.
14. In his testimony as LLW1, the Landlord adopted the aforesaid statement dated 6th September 2023 as his evidence and also produced all the document in his list of documents and supplementary list of documents dated 6th September 2023 and 11th December 2023 respectively as his Exhibit No. 1 to No. 11.



15. In his oral evidence, the Landlord denied harassing or intimidating the Tenant. He denied that the Tenant had no access to the Toilets and that the roof to the same had been removed. The landlord admitted that the Tenant had developed the plot but that there was no agreement that the cost thereof would be refunded to him. To the landlord, he was to recover the same from his business and subletting.
16. The Landlord thereafter filed the submissions dated 2nd May 2024. We have perused all the pleadings herein, the parties oral evidence and respective submissions and are of the view that the issues for determination are the following:-
 - A. Whether the respondent was the legitimate landlord in relation to the demised premises and whether he was entitled to issue the termination notice.
 - B. Whether the termination notice dated 30th November 2024 is lawful.
 - C. Who should bear the costs of the suit.

Issue No. A- Whether the Respondent was the legitimate landlord in relation to the demised premises and whether he was entitled to issue the termination notice.

15. The Tenant in all his pleadings including in the reference herein and in BPRT case No. 61 of 2020 (Nyeri) he has recognized the Respondent as his Landlord. Indeed it is the Tenant who has originated both the present suit and BPRT NO. 61 of 2020 (Nyeri) and duly recognised the Respondent as his landlord.
16. In the event that the Respondent was not the applicant's landlord in both this matter and BPRT case No. 61/2020 (Nyeri), this court would not have had the wherewithal nor jurisdiction to address the matters before hand. However, both parties have admitted and submitted to the jurisdiction of this court.
17. The Applicant has also presented that he pays rent to the respondent and cements the Landlord/ Tenant relationship. Section 2(1) of the Act defines a landlord as:-

“In relation to a tenancy, means the person for the time being entitled, as between himself and the Tenant, to the rents and profits of the premises payable under the terms of the tenancy”.
18. On the other hand the Act defines a Tenant as:-

“In relation to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding and includes a sub-tenant”.
19. The Tenant did not disclaim that he was a tenant on the demised premises. His only alleged grievance was that the same was not registered in the names of the respondent. Also that the grant in Nairobi High Court Succession Cause No. 661 of 2018 had not been confirmed. In short he disputed the ownership of the premises by the Respondent.
20. It is our view that the Landlord was estopped from raising any question or status of the estate of the father to the respondent the late Robert Timothy Gacheche. That is an issue that has long been settled by the High court.



21. In the case of Ramadhan Mohammed Ali - vs- Hashim Salim Ghanim Mombasa Civil Appeal No. 32 of 2013 (2015) eKLR Justice A. Emukule as he then was held that:-

“There is no dispute that the Respondent was in relation to the payment of rent, the Appellant’s landlord and from the evidence before the Tribunal he is the person who is entitled to the rents and profits from the suit property as part of the deceased’s estate. As such, it was not compulsory for him to apply for and take out grant of letters of Administration under Section 45 of the [Law of Succession Act](#) before giving the notice of termination of tenancy. The Tribunal’s finding at page 3 of its judgement is correct that:-

“Ownership is not an issue that is relevant under the [landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) (Cap.301)”.

22. That issue therefore resolves to the effect that the Respondent is the Landlord to the Tenant in respect of Title no. Karatina Town Block 1/145.

Issue No. B- Whether the Termination Notice dated 30th November 2022 is lawful.

23. To terminate a tenancy, a landlord requires strict compliance with Section 4(2), (4) and 7 of the act and Regulation 4(1) of the Regulations to the Act. We shall for clarity highlight the same here below:-

- (i) Section 4(2) of the Act provides that:-

“A Landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the Tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form”.

- (ii) Section 4 (4) provides that:-

“No tenancy shall take effect until such date not being less than two (2) months after the receipt thereof by the receiving party, as shall be specified therein”.

- (iii) Section 7(1)(g) states the following:-

“Grounds on which a landlord may seek to terminate tenancy include “that on termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises”.

- iv) Lastly Regulation 4(1) of the regulations to the Act provide that:-

“A notice under Section 4(2) of the Act by a Landlord shall be in Form A in the schedule to these Regulations”.

24. A deep perusal of the notice of termination by the landlord dated 30th November 2022 speaks to the reality that in terms of form and content, the same is complete and strictly compliant with the law. What remains for our determination is whether the ground for termination which is stated as “To demolish and Re-construct” satisfies the Requirements of the law.



25. The Landlord has produced building plans for the intended new building and also Bank Statements to demonstrate the intention and the ability to implement the same. In his evidence, he asserted that the plans were only pending approval by the relevant authorities. That he could not have applied for the same as such approval has a lifespan of only three (3) months. He was therefore waiting for the conclusion of this matter to move appropriately.
26. On the other hand, he had over Twenty million Kenya Shillings to implement his intention to demolish and reconstruct the premises in accordance with the building plans presented to court and which were only pending approval.
27. To us, the Landlord's intention was categorical and settled on what he needed to do on the premises. We have no basis nor justification to doubt the same. He has also demonstrated that the demolition and reconstruction required complete possession of the premises. In the case of Auto Engineering Limited – vs- M. Gonella & co. Limited civil Appeal Nos 70 of 1976 and 51 of 1977 (1978) eKLR the court of appeal held that:-

“In such circumstances the court must be careful to see that Section 30(1)(f) equivalent to our Section 7(1) (f) is fully satisfied before it allows him to get possession. For this purposes the court must be satisfied that the intention to reconstruct is genuine and not colourable. That it is a firm and settled intention, not likely to be changed, that the reconstruction is of a substantial part of the premises, indeed so substantial that it cannot be thought to be a device to get possession, that the work is so extensive that it is necessary to get possession, of the holding in order to do it and that it is intended to do the work at once and not after a time”.

28. The Landlords notice of termination dated 30th November 2022 is therefore found to be solidly grounded in the law and is given effect from the 1st February, 2024 as intimated thereof.

Issue No. C- who should bear the costs of this suit.

29. We appreciate that the Tenant has lost the reference. We have also noted and taken due regard to the report by the inspector of this court. From the report dated 12th April 2024 it is clear that the landlord has not afforded the Tenant quiet possession and enjoyment of the demised premises. This was plainly in conflict and breach of orders of this court. We would therefore direct that each party do bear own costs.
30. The upshot of all the analysis herein before, we make the following orders:
- (i) That the Applicant and Respondent herein are Tenant and Landlord as envisaged by Section 2(1) of the Act.
 - (ii) That the notice of termination dated 31st November 2023 is lawful and took effect on the 1st February 2024.
 - (iii) That the Tenant has 30 days to evacuate from the demised premises or be evicted at his cost.
 - (iv) That each party shall bear own costs of this reference.

Those are the orders of the court.

JUDGEMENT, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY OF JUNE, 2024.

HON. NDEGWA WAHOME- MEMBER



MBS HON. JOYCE MURIGI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL BPRT

30TH JUNE 2024

Judgement delivered in the presence of Mr. Kisaka for the Landlord. The Tenant is absent though aware of the date.

HON. NDEGWA WAHOME- MEMBER

MBS HON. JOYCE MURIGI - MEMBER

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