



**Kangaru t/a Timber Masters Enterprises v Muringe (Tribunal Case
E783 of 2022) [2023] KEBPRT 1338 (KLR) (24 February 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1338 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E783 OF 2022
A MUMA, VICE CHAIR
FEBRUARY 24, 2023**

BETWEEN

**DOMINIC MWANGI KANGARU T/A TIMBER MASTERS
ENTERPRISES TENANT**

AND

MARY ANNE MURINGE LANDLADY

RULING

Introduction

1. The Tenant's chamber summons application dated 5th September 2022 seeks orders restraining the Landlady/Respondent from terminating the tenancy, dispossessing or evicting the Tenant from plot No 2520 Embakasi Ranching Company Limited off Kangundo Road (hereinafter the suit premises) or from in any manner interfering with the Applicant's tenancy on the suit premises.

The Tenant's Depositions

2. The Tenant/Applicant has deposed in his affidavit sworn on 5th September 2023 in support of the application that the Landlord issued him with a notice to terminate tenancy dated 6th October 2021, the Tenant has deposed that the said notice is illegal, and "constating".
3. The Tenant further deposes that the Landlady has issued a further illegal and unlawful formal notice dated 30th August (item not provided in the affidavit at paragraph 2 thereof.) The reasons given in this notice are unlawful and illegal as in the Tenant's view, he occupies only 1/10th of the Land and he is the one who developed the premises.
4. The Tenant deposes that he took up the suit premises while it was vacant and has constructed the premises at his own expense and also installed electricity at a cost of Kshs 600,000/-.



5. The Tenant has deponed that despite him being unwell for fourteen months during which the suit premises was closed coupled with the covid 19 interruption, he still continued paying rent.
6. It is the Tenant's deposition that the Landlady has illegally disrupted the operations of the Tenant's business by interfering with personnel and machinery belonging to the Tenant.
7. It is also deponed that the Landlady has sought to unlawfully increase rent by over 200% without justification or reason.
8. It is further deponed that on 25th September 2021 the Landlady's agent interfered with the Tenant's electricity supply and thereby damaged the Tenant's machines resulting to losses in the sum of Kshs 1,028,000/-. The Landlady's agent on the same day unlawfully locked up the toilet in the suit premises.
9. The Tenant has also deponed that the lack of power led to interruption of the Tenant's business for four days leading to a loss of Kshs 137,500/- for unconfirmed orders, daily sales of Kshs 60,000/- per day and Kshs 7,600/- in employee salaries paid whilst the employees were not working.
10. The Tenant in his further affidavit has deponed that the Landlady has land and space to do the business she desires to do and there is no need for her to terminate the tenancy.
11. The Tenant has deponed that his lease with the Respondent herein has no connection with Elimu Schools as he is neither a teacher there nor a land owner.
12. The Tenant depones in his affidavit that the notices marked as DMK 1 and DMK 2 in his affidavit are void as they are neither in the statutory format nor issued in compliance with mandatory statutory provisions.
13. The Tenant has also deponed that the Landlady is keen on taking over the premises constructed on the suit premises by the Tenant.
14. The Tenant states that the Landlady has not demonstrated why she is particularly interested in the small portion occupied by the Tenant while she should return the bigger and vacant portion of the land.

The Landlady's Depositions

15. The Respondent in her replying affidavit sworn on 3rd October 2022 that sometimes in January 2017, the Tenant herein rented on a temporary basis, a portion of the suit premises to carry out the business of timber sales as he prepared to relocate to his land which comprised of Elimu House School; the Tenant also requested to be allowed to fix a three phase electricity supply. It was mutually agreed that the electricity supply would remain once the Tenant vacated the premises.
16. The Respondent/Landlady depones in her affidavit that the costs of the three phase electricity installation was Kshs 99,182/- and not Kshs 600,000/- as alleged by the Tenant.
17. The Landlady states that the Tenant's rent for six months being the duration of the installation of the electricity was waived and eventually a lease agreement was entered into between the parties on 27th June 2017.
18. The Landlady depones that the Tenant's tenancy of a portion of the subject premises extended up to the year 2021 and in July 2021, the Landlady informed the Tenant of her desire to utilize the suit premises for her own use being the establishment of an animal feeds sales business.
19. The Tenant depones that the notice dated 6th October 2021 was issued to the Tenant in accordance with the lease agreement entered into between the parties.



20. The Landlady has further deposed that she has not authorized any one to act as her agent in the suit premises and all the alleged interferences by herself or her agents in the operations of the Tenant's business are false. The allegation of any rent increase by the Landlord has been vehemently denied by the Landlord.
21. The Landlady further deposes that proper and sufficient notice of termination of tenancy has been issued to the Tenant and that further, no reason has been given why the Tenant does not want to vacate the suit premises as per the Landlady's demands.
22. Both parties have filed their written submissions which I have considered in the writing of this ruling.

Analysis and Determination

23. The issues that arise for determination in this suit are, in my humble view, the following:
 - a. Whether the tenancy between the parties is a controlled tenancy.
 - b. Whether the notice to terminate tenancy dated 6th October 2021 is a valid notice.
 - c. What is the place of the Landlord's notice to terminate tenancy dated 30th August 2022 in the context of these proceedings.
 - d. Whether the Tenant is entitled to the orders sought in the application.

On Issue A

24. The lease agreement between the parties herein is the one dated 27th June 2017. It expresses itself to be strictly for one year but renewable. The lease further requires each party to give the other a one year notice to terminate the tenancy. The lease between the parties is a controlled tenancy within the meaning of section 2(1)(b)(1) of [Cap 301](#) which defines a controlled tenancy to mean a tenancy of a shop, hotel or catering establishment;
 - a. Which has not been reduced into writing or
 - b. Which has been reduced into writing and which
 - i. Is for a period not exceeding five years.
25. The relationship between the parties is one therefore governed by the provisions of [Cap 301](#) of the Laws of Kenya.

Issue B

26. The lease agreement dated 27th June 2017 was set to expire on or about July 2018. The parties however seem to have continued with a tenancy relationship leading to the notice dated 6th October 2021. The said notice does not amount to a valid notice under section 4(2) of [Cap 301](#) which provides as follows;

“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 Landlord in the prescribed form.”
27. The notice issued and dated 6th October 2021 is not in the prescribed form nor does it further conform with section 4(5) of [Cap 301](#). It is invalid and of no legal effect.



On issue C

28. The Landlord's notice to terminate tenancy dated 30th August 2022 expresses itself to be effective on 6th October 2022. I have perused the same and it conforms to the provisions of section 4(2) of Cap 301 as far as the form is concerned. I however note that the notice does not conform with the provisions of section 4(4) of Cap 301 which provides as follows;

“No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, as shall be specified therein;

Provided that

- i. Where notice is given of the termination of a controlled tenancy, the date of termination shall not be earlier than the earliest date on which but for the provisions of this Act, the tenancy would have or could have been terminated.
 - ii. Where the terms and conditions of a controlled tenancy provide for a period of notice exceeding two months, that period shall be substituted for the said period of two months after the receipt of the tenancy notice.
 - iii. The parties to the tenancy may agree in writing to any lesser period of notice.
29. The parties in this case have not agreed to a notice period of less than two months. The only notice period common to the parties is the one year notice which by operation of law gets reduced to a notice period of two months. The notice dated 30th August 2022 could only have taken effect on 1st November 2022 and not 6th October 2022 as expressed therein. To that extent, the notice is invalid and of no legal effect.

Issue D

30. Having found that both notices issued by the Landlord to the Tenant in this matter are invalid, I am of the view that the Tenant is entitled to the orders sought in his application and I allow the same in terms of prayers 3 and 4 thereof.
31. The above findings sufficiently answer the concerns raised in the reference filed by the Tenant and the same is allowed in similar terms with costs.
32. The Landlady has clearly shown her desire to take possession of the suit premises. But for technical defects of her notice to terminate tenancy, the same would largely have succeeded as unopposed. In this regard, I will allow the Landlady to issue a fresh notice to terminate tenancy after the expiry of thirty days from the date of this ruling if she so desires.

HON CYPRIAN MUGAMBI NGUTHARI – CHAIRMAN

23. 02.2023

RULING DELIVERED VIRTUALLY BY HON A. MUMA (VICE CHAIR) THIS 24TH DAY OF FEBRUARY 2023 IN THE PRESENCE OF ODAWA FOR THE TENANT AND IN THE ABSENCE OF THE LANDLORD.

HON A. MUMA – VICE CHAIR

24. 02.2023

