



**Okuku v Mugo (Tribunal Case E681 of 2023)
[2023] KEBPRT 1324 (KLR) (6 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1324 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E681 OF 2023
CN MUGAMBI, CHAIR
DECEMBER 6, 2023**

BETWEEN

NELLY OKUKU APPLICANT

AND

SARAH KANYI MUGO RESPONDENT

RULING

1. The Tenant/Applicant's amended motion dated 26.7.2023 seeks orders restraining the Respondent/Landlord from in any manner interfering with the tenant's peaceful occupation of the business premises known as Stall No. 58, Kenyatta Market. The tenant has also sought police assistance through the OCS, Capital Hill police station in ensuring compliance with the orders sought.

The Tenant's depositions

2. The tenant's affidavit in support of her motion may be summarized as follows:-
 - a. That on or about July 2023, the Respondent issued the Applicant with an incurably defective notice to vacate the suit premises.
 - b. That the tenant is not in any rent arrears and the sole motive of the Respondent is to evict the tenant and lease out the premises to another tenant at a higher rate.

The Respondent's replying affidavit

3. The replying affidavit of the Respondent may be summarized as follows:-
 - a. That about ten (10) years ago, the Respondent leased to the tenant the suit premises at an agreed rent of Kshs. 6,000/=, the agreement was oral.



- b. That on 10.7.2023, the Respondent served the tenant with a notice to terminate or alter terms of the tenancy dated the same day. The notice sought to increase the rent to Kshs. 10,000/= effective 1.10.2023.
- c. That the above notice was issued in strict accordance to the law notices under Section 4 of [Cap 301](#).
- d. That the notice to alter terms of the tenancy was not an eviction notice and in the circumstances, the court ought to allow it.

The Tenant's further affidavit

- 4. The tenant's further affidavit may be summarized as follows:-
 - a. That contrary to the depositions by the Respondent, the agreement between parties was in writing as can be seen from the agreement dated 20.4.2013.
 - b. That an escalation of the rent for the suit premises would in the circumstances favour the landlady.
 - c. That the notice to terminate tenancy or alter the terms thereof has been issued by Muthoni Mugo, a daughter of the landlady and not the landlady herself- and is therefore illegal.
 - d. That Muthoni Mugo has no legitimate claim or standing in this matter.
 - e. That Muthoni Mugo, has continually demanded the rent increment from the tenant illegally as she is not the landlady's tenant.
- 5. The Respondent's supplementary affidavit may be summarized as follows:-
 - a. That Wambugi Mugo, a daughter of the landlady passed on in 2017 but the rent has always been paid into her account since 2015.
 - b. That from 2017, the landlady authorized Faith Muthoni Mugo her other daughter to collect the rent for the suit premises.
 - c. That the Applicant has acknowledged service of the tenancy notice upon himself.

Analysis and determination

- 6. The only issue that arises for determination is whether the application by the tenant may be allowed in terms of the orders sought.
- 7. The tenant's main contention is that she has been served with a defective notice to alter the terms of her tenancy by the Respondent. I have perused the impugned notice and I am satisfied that the notice is in the prescribed form. What is contested, and which contestation the Respondent admits to, is the fact that the notice to alter the terms of the tenancy has been issued by one Muthoni Mugo who is not the landlord of the tenant.
- 8. The landlady has deposed in her affidavit that she is the one who has authorized the said Muthoni Mugo to collect rent on her behalf. I think whether or not Muthoni Mugo qualifies to be a landlady within the meaning of the Act and whether the notice is therefore valid or invalid, is a matter that ought to be best determined in proper proceedings challenging the notice under Section 6 of [Cap 301](#).
- 9. On arriving at the above reasoning, I am guided by the admitted fact that the tenant does not owe any rent arrears and the only dispute is as to whether the rent may be increased or NOT!



10. I also note that the landlady has not brought any notices of her own to enforce her notice to terminate tenancy and it is in my view, not proper to seek to enforce the same by way of a replying affidavit.
11. I am also of the view that the tenant has raised issues which in my view require to be attended to by the Tribunal and which therefore amounts to a prima facie case.

Disposition

12. In the circumstances of this case, the orders which commend themselves to me and which I hereby make are the following:-
 - a. That the landlady is hereby restrained from illegally evicting the tenant from the suit premises.
 - b. The landlady is at liberty to undertake separate proceedings to enforce the notice to terminate or alter terms of tenancy dated 10.7.2023 in separate proceedings.
 - c. That the landlady shall not increase the rent payable for the premises until conclusive orders are made on her notice to terminate or alter the terms of the tenancy herein.
 - d. That each party shall bear their own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF DECEMBER 2023.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

12.2023

In the presence of Ms. Ndung'u holding brief for Mr. Mungai for the Respondent

In the absence of the Applicant/Tenant

