



**Kamau v Kuria (Tribunal Case E279 of 2023)
[2023] KEBPRT 1151 (KLR) (28 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1151 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E279 OF 2023
CN MUGAMBI, CHAIR
NOVEMBER 28, 2023**

BETWEEN

SIMON MAINA KAMAU APPLICANT

AND

JAMES KAMAU KURIA RESPONDENT

RULING

Introduction

1. The landlord's notice to terminate tenancy (hereinafter referred to as the notice) is the one dated 20.2.2023 and is brought on the grounds that the tenant is interfering with the electricity meter connection and that the landlord wants to renovate and use his premises.
2. The tenant did not agree with the landlord's notice and proceeded to file a reference to the Tribunal dated 14.3.2023 and hence these proceedings.
3. The matter proceeded for hearing on 7.9.2023.

The Landlord's Case

4. The evidence of Mr. James Kamau Kuria the landlord may be summarized as follows:-
 - a. That the tenant sells milk at the suit premises and pays rent at will whereas the agreement is that rent should be paid by the (2nd) second day of every month.
 - b. That the landlord issued a notice to terminate tenancy to the landlord.
 - c. That the tenant vandalized the electricity meter and the same was disconnected.
 - d. That all the rental units in the premises do not have electricity because the tenant has vandalized the meters.



- e. That the tenant has also destroyed the floor of the premises.
 - f. That the tenant has not paid rent for five months.
 - g. That the landlord now wants the tenant ordered to vacate the premises and to further restore the suit premises to its original state.
 - h. That the landlord also prays that the tenant meets the costs of reconnecting the electricity.
 - i. That the employees of the tenant are disrespectful to the landlord.
5. Upon cross examination by the tenant, the landlord stated as follows:-
- a. That he did not see the tenant interfering with the electricity.
 - b. That the tenant did not renovate any of the units in the suit premises as the parties had no agreement on the renovations.
 - c. That the landlord had already fixed the tiles.
 - d. That the landlord did not witness the tenant instructing his workers to insult the landlord.
 - e. That people from Kenya Power & Lighting company disconnected the electricity.
 - f. That although the landlord was not sure that the people who disconnected electricity were from KPLC, they told him that every time they disconnected electricity the tenant reconnects the same. The matter is under investigations by the police.
6. Re-examined by his Counsel, the landlord made the following clarifications:
- a. That each tenant has his own meter.
 - b. That the tenant threw away his meter and for which meter the tenant was responsible.
 - c. That the parties had no agreement for renovations as the units were ready for occupation.
7. The Respondent further clarified to the court that he has eight tenants and that each one of them has their own meters. He further stated that the electricity was disconnected from the post.

The Tenant's case

8. The tenant's evidence in chief may be summarized as follows: -
- a. That the tenant entered into the suit premises mid the year 2014 and previously the premises had been closed down due to Health concerns.
 - b. That the tenant is not always in the suit premises due to his schedule.
 - c. That the tenant has no idea what happened to the meter box.
 - d. That the tenant has been paying his rent through M-pesa.
 - e. That the tenant is unwell as he is suffering from colon cancer and the landlord has on occasions bought him drugs for his condition.
 - f. That the tenant was not there when the KPLC staff disconnected the electricity.
 - g. That when the tenant took possession of the suit premises, the same had broken tiles which the tenant repaired as he also repaired all the other shops in the premises.



9. Cross examined by Counsel for the landlord, the tenant stated as follows:
- a. That it is true that he was served with the notice to terminate his tenancy.
 - b. That there was no good cause/reason shown for the tenant to vacate the suit premises.
 - c. That the tenant's shop is the only one that sells milk and tiles are recommended for milk shops by the dairy board.
 - d. That the parties had an agreement for renovations.
 - e. That the tenant uses "tokens".
 - f. That the tenant has never interfered with the electricity supply.
 - g. That it is the landlord who said that the meter had been taken away. It is the landlord who has a responsibility for the meter box.
 - h. That the tenant is not aware of any report made to the KPLC and the landlord is not being truthful with this matter.
 - i. That the tenant has taken a loan to support his business and only requests time to relocate from the suit premises after he has finished servicing his loans.
 - j. That the tenant has not been able to pay his loans due to his medical condition and which the landlord is well aware of, the tenant though, is desirous of clearing his rent arrears in two months.
 - k. That the tenant is not able to vacate the premises.
 - l. That there is no evidence that it is the tenant who tampered with the electricity.
10. The Tenant further informed the court that the electricity bill stood at Kshs. 26,000/= while the rent arrears stood at Kshs. 60,000/= and that he was the only one who had a "token" in the premises.
11. Mary Muthike Maingi, the Tenant's witness gave her evidence in chief as follows: -
- a. That she is the wife of the tenant and she is the one who runs the business at the suit premises.
 - b. That she has been running the business in the suit premises since 2023 May when her husband the tenant got unwell.
 - c. That when they took over the premises in the year 2018, it had a "token".
 - d. That the meter was taken away in the year 2022.
 - e. That the power to the suit premises was disconnected in February 2022 but reconnected after the witness had given the landlord Kshs. 10,000/= at the landlord's request to resolve the issue with KPLC. The power was however disconnected after just one week.
 - f. That the witness sent a further Kshs. 3,000/= and the electricity supply was connected. During this connection time, the tenant did not have a meter and the landlord connected him to a meter to a different house which did not have a tenant. The meter shared by these two units is the one with an electricity bill of Kshs. 22,000/=.
 - g. That the tenant and the other tenant who came to occupy the empty house with which the tenant shared an electricity meter have an amicable mode of sharing the bill and clearing the same.



- h. That by the time the notice to terminate tenancy was issued, the landlord had no reason to terminate the tenancy as the issue of the electricity had been resolved.
 - m. That the witness has always paid her rent on time until her husband got diagnosed with cancer, a fact well known to the landlord who has on occasions assisted the couple to purchase drugs.
 - n. That the tenant will have cleared rent by November 2023.
 - o. That electricity supply has been disconnected because another tenant has illegally tapped electricity and not because of any electricity bill.
12. Upon cross examination, the witness stated as follows:-
- a. That she was there when the agreement was signed in 2018.
 - b. That the token meter box was taken away by person unknown to the witness and she was not aware that the landlord had reported the loss of the meter to the KPLC.
 - c. That the landlord asked for money to sort out the issues with KPLC.
 - d. That there are eight units in the premises and there is no reason why the landlord is picking on the tenant.
 - e. That the witness has no agreement with the landlord for renovations of the premises.
 - f. That by December 2023, the tenant will have cleared all the rent arrears and in four years' time, the tenant will vacate the suit premises without much ado.
13. Both parties have filed their submissions. I have read the same and will consider them in this ruling.

Analysis and determination

- 14. The only issue that arises for determination in this suit is whether the landlord has established by way of evidence the grounds of termination of tenancy set forth in his notice to terminate tenancy dated 20.2.2023.
- 15. The grounds upon which termination of the tenancy is sought are that the tenant has tampered with the electricity meter by connecting and disconnecting and that the landlord "wants" to renovate and use the premises.
- 16. Whereas the landlord alleges that it is the tenant who vandalized the electricity supply meter, on cross examination he confirmed that he had no evidence that the tenant interfered with the electricity.
- 17. The tenant on his part stated that he is not aware of what befell the meter box and he was not there when staff from KPLC disconnected the electricity. On cross examination, the tenant stated categorically that he had never interfered with electricity.
- 18. The evidence of the tenant's witness is that the electricity supply was interfered with by a neighbor and that the tenant was innocent of any such interference.
- 19. I have gone through the evidence of the landlord and I have not found any evidence to support the allegation that the tenant has in any way interfered with the electricity supply to the premises. What is clear is that whereas electricity supply may have been interrupted by certain of the tenants in the suit premises, there is no conclusive evidence to pin the wrong doing on any of the tenants. It was the duty of the landlord to provide the Tribunal with solid evidence in proof of this allegation against the tenant and which I find not proven.



20. The landlord led no evidence in support of his second limb/ground of the notice to terminate. The landlord seems to have concentrated on the lack of an agreement between himself and the tenant for the tenant to undertake any renovations in the suit premises. The landlord also seems to have concentrated on the illegal power connections and led no evidence whatsoever to support the ground that he intended to renovate the premises.
21. I have not further found any evidence of the nature of renovations the landlord intends to undertake in the suit premises and I am therefore unable to establish whether or not the landlord requires vacant possession in order to carry out the alleged renovations.
22. Consequently, it is my finding that the landlord has not established any of the grounds for termination of tenancy set forth in his notice to terminate tenancy dated 20.2.2023 and I do order that the said notice shall be of no effect.
23. Further, I do find that the reference by the tenant has merit and the same is allowed with costs to the tenant.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF NOVEMBER 2023.

HON. CYPRIAN MUGAMBI - CHAIRPERSON - 28.11.2023

Delivered in the presence of Mr. Ochanga for the landlord

In the absence of the tenant

