



**Samuel C. Saikwa t/a Hester Gaa Photocopying v Mungai Commercial Agencies & another
(Tribunal Case E113 of 2022) [2023] KEBPRT 69 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 69 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E113 OF 2022
A MUMA, VICE CHAIR
JANUARY 31, 2023**

BETWEEN

SAMUEL C. SAIKWA T/A HESTER GAA PHOTOCOPYING TENANT

AND

MUNGAI COMMERCIAL AGENCIES AGENT

AND

A.O NYAIRO T/A ELD COFFEE LIMITED LANDLORD

RULING

1. The application before me is the tenant's notice of motion dated September 20, 2022. The applicant sought orders of temporary injunction and an order compelling the respondent landlord to reopen the demised premises. The application which was filed under certificate of urgency was placed before the Honourable Tribunal on September 22, 2022 whereby interim orders were issued pending inter partes hearing. The respondent upon being served duly entered appearance and filed their response. Subsequently the parties agreed to canvass the application by way of written submissions.

Tenant's case

2. The tenant's case can be summarized as follows:
 - a. The tenant had been in occupation of the demised premises and had always been paying rent as when it fell due
 - b. That he was in the process of changing his business from a Mpesa shop to a hardware.
 - c. That the landlord had without any colour of right closed the business premises without following the laid down procedure under cap 301.



- d. The tenant had thus been forced to report the matter to the Police who referred him to the honourable tribunal.
- e. The tenant therefore prayed for the tribunal to reopen the demised premises and an order be made against the landlord to grant peaceful and quiet occupation.

Landlord's case

- 3. The landlord opposed the application on the following grounds:
 - a. The applicant sued the wrong party as the second respondent was a separate and distinct legal entity from Eldo Coffee Limited.
 - b. The entire complaint was anchored on falsehoods thus was not deserving the attention of the Honourable Tribunal.
 - c. The landlord further accused the tenant of being a habitual rent defaulter who only met their obligation so as to seek the orders of the Honourable Tribunal.
 - d. He further accused the tenant of undertaking structural changes on the demised premises without his express permission in blatant disregard to the terms of the tenancy agreement.

Analysis

- 4. The Tribunal has considered the affidavits on record and the submissions filed. The Tribunal has to determine whether the applicant is deserving the orders sought.
- 5. The present proceedings from the mere perusal of the evidence on record were precipitated by the landlord's actions of locking out the tenant from the demised premises. The landlord has admitted to having denied the tenant access since he was engaging in unapproved construction works.
- 6. Other than the landlord challenging the fact that a wrong party was joined in the present suit, the parties have both submitted to the jurisdiction of the Honourable Tribunal. I have perused the pleadings, the landlord has not denied receiving rent and has even claimed that the tenant was a habitual rent defaulter, how then do they become a wrong party to the proceedings?
- 7. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* cap 301 which is the principal statute governing the operations of this Tribunal is intended to protect tenants from the exploitation and eviction from business premises by the landlord without due process and procedures laid down for termination of tenancy.
- 8. Section 4(1) of *Cap 301* stipulates the process of termination of controlled tenancies follows: -
 - “(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with the following provisions of this Act
 - (2) 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. ”

9. The Act also dictates that the notice must indicate the reasons for the proposed termination of tenancy and must also give a period of one month within which the tenant may voice his objection (if any) to the proposed termination. This requirement is contained in section 4(5) which provides *inter alia*:-

“ A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and requires the receiving party to notify the requesting party in writing, within one month after the date of receipt of the notice, whether or not he agrees to comply with the notice.”

10. The above provisions of the Act are couched in mandatory terms. This therefore leads to the question of whether the landlord was justified and followed the above laid down process in denying the tenant access. The answer is in the negative. The landlord has not demonstrated to the tribunal any attempt to report the tenant for what he termed illegal construction to the relevant regulatory body.
11. In view of the above, the application is merited. The prayers sought in the reference are similar to those in the application. This ruling will effectively settle the reference. It is trite law that costs follow an event. The tenant was self-represented but failed to seek for costs. The Tribunal shall award him an equivalent of 2 months rent waiver as the costs for both the application and reference.

Disposition

12. In the end, the Tribunal makes the following orders:
- a. Application dated September 20, 2022 is allowed in terms of prayers 3 and
 - b. This ruling settles the reference dated September 20, 2022
 - c. The applicant is granted costs of the application and reference assessed at Kes 16,000.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 31ST DAY OF JANUARY, 2023.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

