



**Nduiga v Muiru (Tribunal Case E048 of 2024)
[2024] KEBPRT 1230 (KLR) (26 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1230 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E048 OF 2024
CN MUGAMBI, CHAIR
AUGUST 26, 2024**

BETWEEN

JOHN NDUIGA APPLICANT

AND

MARGARET NJERI MUIRU RESPONDENT

RULING

Introduction

1. The Tenant's Application dated 18.4.2024 seeks orders restraining the Landlord from evicting the Tenant from the premises known as Njoro/Ngata Block 1/4854 (New Kiambu) (hereinafter the suit premises) pending the hearing and determination of the Reference. The Tenant has also sought the assistance of the OCS Menengai police station in the enforcement of the orders sought.

Tenant's depositions

2. The Affidavit in support of the Application sworn by the Applicant on 18.4.2024 may be summarized as follows;-
 - a. That on 7.12.2021, the Tenant entered into a lease agreement with one Emma Mary Wanjiru to continue leasing the suit premises on which the Tenant had established a workshop.
 - b. That the Tenant has paid the rent for the entire duration of the lease agreement in the sum of Kshs. 120,000/= upto January, 2024
 - c. That sometimes in March 2024, the Respondent herein served the Tenant with a notice to terminate tenancy.
 - d. That the Tenant has not in any way breached the lease agreement between him and Emma Mary Wanjiku Njuguna.



- e. That there does existtenancy between the Tenant and the Respondent herein and the Tenant's Landlord Emma Mary Wanjiku Njuguna has not served the Tenant with any notice to terminate tenancy.

The Landlord's depositions

- 3. The Replying affidavit sworn by the Respondent on 10.7.2024 may be summarized as follows;-
 - a. That the Respondent is registered as a co-owner of the suit premises together with her deceased son, Joseph Muchomba.
 - b. That the Tenant initially entered into a nine (9) year lease for the suit premises (1.1.2011 to 31.12.2020) with the deceased husband of the Respondent at a monthly rent of Kshs. 2,500/= per month.
 - c. That upon the expiry of the lease, the Tenant stopped paying rent and instead filed Tribunal case No. BPRT 14/2021 (Nairobi) which was decided in favour of the Tenant.
 - d. That in the said Ruling, the Tribunal held that the tenancy between the Tenant and the Respondent herein was a controlled tenancy.
 - e. That from the Tenant's affidavit, the Respondent has since learned that the Tenant has entered into a lease agreement with one Emma Mary Wanjiku while knowing only too well that the said Wanjiku has no property nor legal capacity to enter into any such lease.
 - f. That the said Emma Mary Wanjiku having no legal capacity to enter into any lease over the suit property, the agreement between the Tenant and the said Emma Mary Wanjiku is a nullity in law and has no legal effect whatsoever.
 - g. That the Respondent's Advocates have served the Tenant with a notice to terminate tenancy which was effective 1.6.2024- and the Tenant has not filed any Reference in opposition to the said notice and the notice has therefore taken effect, and the Tenant is now a trespasser upon the suit premises.

Analysis and determination

- 4. The issues that arise for determination in this Application are the following;-
 - a. Whether there exists a Landlord/Tenant relationship between the parties herein and if such tenancy exists, whether it is a controlled tenancy and consequently whether the Tribunal has the jurisdiction to hear and determine this dispute.
 - b. Whether the Tenant is entitled to the orders sought in his Application.

Issue A: Whether there exists a Landlord/Tenant relationship between the parties herein and if such tenancy exists, whether it is a controlled tenancy and consequently whether the Tribunal has the jurisdiction to hear and determine this dispute.

- 5. The Tenant who has brought this case to court has denied that there exists any Landlord/Tenant relationship between him and the Respondent. The Tenant only recognizes one Ms. Emma Mary Wanjiku Njuguna (hereinafter only referred to as Emma) as his Landlord.

If this were to be the end of the matter, I would easily have struck out the Tenant's cause as the Tribunal would have no jurisdiction where the Tenant sues a party whom he expressly states is not his Landlord. In that event, the Tenant's suit would have been an abuse of the court process.



6. The Tenant has annexed a lease agreement between himself and Ms. Emma. The said lease agreement recognizes the fact that the suit premises is registered in the joint names of one Joseph Muchomba The Respondent herein. The said Ms. Emma is said to be the beneficiary of the Estate of the late Joseph Muchomba. Other than the statements in the lease document, the Tenant has not annexed any letters of administration issued in favour of the said Ms. Emma and neither has the said Emma sworn any affidavit in support of the allegation by the Tenants.
 7. The Tenant has argued that the Respondent herein had no business issuing him with a notice to terminate tenancy for the reasons that there does not exist any Landlord/Tenant relationship between them. But is this the case?
 8. The Respondent has deponed in her replying affidavit that the suit land originally belonged to her husband Paul Muchomba (deceased) and is currently registered in the names of her son and herself. I have not seen any evidence of the proprietorship of Ms. Emma over the suit land.
 9. I have seen the Ruling in Nakuru BPRT Case No. 14A of 2021 which was a suit brought by the Tenant against the Respondent herein. The said Ruling has summarized the Tenant's case therein as follows;-
 - a. That he (Tenant) entered into a verbal lease agreement with the Landlord/Respondent in 2011 in respect of Plot No. Njoro/Ngata Block 1/4854 New Kiambu.
 - b. That he (Tenant) paid Kshs. 270,000/ running from January 2011 to December 2020 as rent...
 - c. That following the demise of the Landlord Paul Muriu Muchomba, during the term of the tenancy, the Tenant approached the Respondent herein who had been appointed as the legal representative of the Estate of the deceased and he (sic) assured the Tenant that he would stay on as a Tenant in the premises.
 - d. That contrary to the assurance, the Respondent through his (sic) Advocates, served a letter demanding that he vacates the suit premises.
 - e. –
 - f. That the nature of the nature of the lease is a controlled tenancy.
 10. In the same Ruling, the Respondent admits that indeed a tenancy existed between her late husband and the Tenant.
 11. The court in its determination of the Application made the following conclusion;-

“The tenancy is between the Applicant and the Respondent is a controlled tenancy under the meaning of Section 2 of the Act and the tenancy can only be tampered with under the provisions of Cap 301.”
 12. The Ruling in the above case clearly declared the tenancy between the parties to be a controlled tenancy. The Tenant in his Affidavit in the said case admits to have been a Tenant of the deceased husband of the Respondent and further admits to have continued staying in the suit premises on account of an undertaking between him and the Respondent.
- In those circumstances, I do not think it is open to the Tenant to deny that there exists a Landlord/Tenant relationship between him and the Respondent. The notice to terminate tenancy issued by the Respondent therefore seems to fallow from the conclusion by the court ha that the nature of the tenancy between the parties was “controlled tenancy.”



I think the notice to terminate tenancy was also issued to deal with the Tenant's Complaint in case No. BPRT 14A of 2021 that the letter dated 27.11.2020 issued to the Tenant by the Landlord did not constitute a proper notice under Section 4 of Cap 301.

13. The Respondent has argued that Ms. Emma was said to have entered into a lease agreement with the Tenant had no capacity to enter into the said lease agreement and the said agreement is therefore of no legal consequence. I have noted elsewhere in this Ruling that the said Ms. Emma has not demonstrated her proprietorship of the suit property. Although the Tenant has annexed a lease agreement which describes Ms. Emma as a beneficiary of the Estate of the deceased Joseph Muchomba, there is no evidence that the suit property or a portion thereof has been specifically distributed to the said Ms. Emma. Further, no grant of letters of administration in favour of the said Ms. Emma has been annexed to the Tenant's affidavit relevant to the Estate of the deceased Joseph Muchomba. In circumstances such as obtain in this case, one would have at the very least expected the said Ms. Emma to file an affidavit in support of the Tenant's claim and this is not the case in this Application.
14. In view of the competing positions as to who between the Respondent and Ms. Emma is the Landlord of the suit premises, it is my finding based on the facts and the Ruling set out in BPRT Case No. 14A of 2021 Nakuru and the undisputed fact that the Respondent herein is registered as one of the proprietors of the suit land, that the Respondent herein is the Landlord of the suit premises.
15. It is my further finding that the lease between Ms. Emma and the Tenant cannot bind the Respondent in these circumstances and further I do find that Ms. Emma had no capacity to enter into a lease agreement over the suit premises.

Issue B: Whether the Tenant is entitled to the orders sought in his Application

16. The Tenant's Complaint is that the Respondent is threatening to evict him illegally while there exists a new lease agreement between the Tenant and Ms. Emma. The Tenant has also complained that the Respondent is attempting to terminate the tenancy by issuing illegal notices. It is on the basis of this Complaint that the Tenant has brought his Application for injunctive relief against the Respondent.
17. I have already found that the said Ms. Emma had no capacity to enter into a lease agreement over the suit premises and consequently, the lease agreement exhibited by the Tenant cannot affect the rights of the Respondent over the suit land. In that aspect of the Complaint having been taken care of, the only issue that remains is whether the termination notice issued by the Respondent is an illegal notice as alleged by the Tenant.
18. The notice to terminate is the one dated 11.3.2024, effective 1.6.2024. I have perused the same and the same is valid and issued pursuant to the provisions of Section 4 of Cap 301. I do not find any merits in the argument by the Tenant that the said notice is illegal.
19. The Tenant has admitted that sometimes in March 2024, he was served with a notice to terminate tenancy and has indeed annexed the notice dated 11.3.2024 to his affidavit in support of the Application. The Tenant was required under the provisions of Section 6(1) of Cap 301, to file a Reference to the Tribunal if he was minded of opposing the notice. This the Tenant did not do as a consequence of which the notice to terminate tenancy became effective from the date indicated therein under the provisions of Section 10 of Cap 301.
20. I therefore agree with the submissions by Counsel for the Respondent that the Application dated 18.4.2024 is not a Reference within the meaning of Section 6(1) of Cap 301 and in absence of such reference, the notice to terminate tenancy took effect from 1.6.2024 beyond which the Tenant became a trespasser upon the suit premises.



Disposition

21. In view of the above findings, I proceed to dispose of this matter by making the following orders;-
- a. That the Tenant's Application and Reference dated 18.4.2024 have no merit and are hereby dismissed with costs to the Landlord.
 - b. That the Landlord's notice to terminate tenancy dated 11.3.2024 is hereby approved subject to the amendment in order (C) hereinabove.
 - c. That the effective date for the notice shall be 31.10.2024.
 - d. That the Tenant shall render vacant possession of the premises on or before 31.10.2024 failing which the Respondent will be at liberty to evict the Tenant using a licensed auctioneer.
 - e. This file is marked as closed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF AUGUST, 2024.

HON. CYPRIAN MUGAMBI - CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Mwallo for the Landlady and in the absence of the Tenant and his Counsel

