



**Mutura v Kagombe (Tribunal Case E571 of 2023)
[2023] KEBPRT 635 (KLR) (3 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 635 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E571 OF 2023
A MUMA, VICE CHAIR
JULY 3, 2023**

BETWEEN

JAMES KAMAU MUTURA APPLICANT

AND

MAINA DAVID KAGOMBE RESPONDENT

RULING

A. Parties and representatives

1. The applicant James Kamau Mutura is the tenant and rented out space from the respondent on the suit property known as plot no 2222 Kahuti & Plot No 2221 Gitweku Murang'a. (hereinafter known as the 'tenant')
2. The Firm of Mbichi Mboroki & Kinyua Advocates represent the tenant/applicant in this matter.
3. The respondent Dr Maina David Kagombe is the landlord and the proprietor of the suit property known as plot no 2222 Kahuti & Plot No 2221 Gitweku Murang'a (hereinafter known as the 'Landlord')
4. The firm of JK Kibicho & Company Advocates represent the landlord/respondent in this matter.

B. The dispute background

5. The landlord served the tenant with a notice to terminate tenancy dated March 12, 2023 requiring that the tenant vacates the premises by June 30, 2023 on the grounds that the tenancy period was coming to an end and the respondent did not intend to renew the same.
6. The tenant in opposition of the notice by the landlord, filed a Reference and a Notice of Motion Application dated June 6, 2023 under section 12(4) of the [Landlords and Tenants \(Shops, Hotels and](#)



Catering) Establishments Act cap 301. The tenant was seeking orders restraining the landlord from evicting them from the premises.

7. The landlord has in response to the tenant's reference and application filed a Notice of Preliminary Objection dated June 13, 2023 questioning the jurisdiction of the Tribunal on the premise that the Agreement between the parties was for a period of more than five years.

C. Tenant's claim

8. The Tenant has filed a Reference and a Notice of Motion Application dated June 6, 2023 seeking that the Landlord be restrained from evicting them from the premises.

D. Landlord's claim

9. The landlord has filed a Replying Affidavit and a Notice of Preliminary Objection both dated June 13, 2023 wherein the landlord is challenging the jurisdiction of the tribunal on the grounds that the lease agreement between the parties was for a period of more than five years.

E. List of issues for determination

10. The issues raised for determination are as follows;
 - a. Whether the Tribunal has the jurisdiction to hear and determine the matter?
 - b. Whether the Notice issued by the landlord to terminate tenancy and the reasons advanced are valid?

F. Analysis and findings

Whether the Tribunal has the Jurisdiction to determine the matter?

11. Section 12 (1) (a) of the Landlord and Tenant (shops, Hotels and Catering Establishments) cap 301 provides that;

“A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power—

- (a) to determine whether or not any tenancy is a controlled tenancy;

12. Section 2 (1) (a) of the Landlord and Tenant (shops, Hotels and Catering Establishments) cap 301 then defines a controlled tenancy as;

“Controlled tenancy” means 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; or
 - (ii) contains provision for termination, otherwise than for breach of covenant,



within five years from the commencement thereof; or

- (iii) relates to premises of a class specified under subsection (2) of this section:

13. In the present case the landlord claims that the agreement between themselves and the tenant is for a term of five years and 23 days being from June 7, 2018 to June 30, 2023.
14. The said lease is indeed for a term exceeding five years. I have however perused the said lease agreement and I take note of the fact that under the clause 5(viii) provides as follows:
- Either party may terminate this tenancy agreement by giving a written notice
- On the part of the landlord by giving a written notice of at least two calendar months. On the part of the tenant by giving a written notice of at least two calendar months.
15. The above provision of the lease agreement renders it a controlled tenancy since it satisfies the above cited provisions of section 2 (b)(ii) of cap 301. It is for a term of more than five years but the same contains a termination clause otherwise than for breach.
16. Having established that the tribunal does have jurisdiction, I shall now proceed to examine the validity of the Notice issued by the Landlord.

Whether the Notice issued by the Landlord to terminate tenancy and the reasons advanced are valid?

17. The tenant approached this tribunal by way of the Reference dated June 6, 2023 in opposition to the landlord's notice to terminate tenancy dated March 12, 2023.
18. The landlord has indicated that the grounds upon which they seek to terminate the tenancy are that they do not intend to renew the lease agreement upon its lapse on June 30, 2023 and additionally that the tenant has defaulted in paying rent for a period of more than two months
19. Section 4 of cap 301 as follows;
- “4(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.”
- (4) 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....
20. The above provision requires that any notice must accord the tenant a period of not less than two months within which to vacate and must provide reasons for the termination.
21. The notice issued by the landlord satisfied these requirements. The Notice was issued on March 12, 2023 and was to take effect on June 30, 2023. The Notice also provided reasons for termination being



that the agreement was coming to an end and the landlord did not intend to renew the same and the tenant had defaulted in paying rent.

22. Section 4(5) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\)](#) also provides that;

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.

23. In the present case, having perused the file, I take note of the fact that the reference by the tenant opposing the Notice was filed on June 6, 2023. This is after the notice was issued in March 2023. By virtue of this, the tenant did not comply with the requirements of the above cited provision.
24. They did not respond to the notice within a month and additionally, they did not file an Application seeking for extension of time or that they be allowed to file the reference out of time.
25. I take note that they did write a letter to the landlord's advocate informing them that they did not intend to comply with the notice. The same was however dated May 17, 2023 which is still more than one month after receipt of the notice from the landlord.
26. The tenant has argued that they carried out substantive developments on the premises for which they shall incur losses if evicted. I am of the opinion that at the time of carrying out the developments the tenant was well aware of the term of the lease. Additionally, they have not provided any proof before this tribunal to show that they got the necessary consent from the landlord prior to carrying out the developments.
27. In addition to the foregoing, I am compelled to return the premises back to the landlord based on the strength of the letter dated May 30, 2023 written by one Dr Muriithi Nyamu highlighting the health status of the Landlord.
28. Seeing as the landlord has raised the issue of the tenant being a defaulter in rent payments it is not advisable to subject the old man to such strenuous relationships in his conditions. He has also requested to be accorded the premises back since he intends to retire and use the said premises.
29. Finally, the lease expired on June 30, 2023 and I see no reason to interfere with the contract between the parties.
30. In light of the foregoing, I therefore proceed to order as follows;

G. Orders

- a. The upshot is that the tenant's Reference and Application dated June 6, 2023 are hereby dismissed in the following terms;
- b. The tenant shall hand over vacant possession of the premises to the landlord immediately failure to which the landlord shall be at liberty to break in and take possession.
- c. OCS Kirogo Police Station to assist in compliance.
- d. Each party shall bear their own Costs.



RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 3RD DAY OF JULY 2023 IN THE ABSENCE OF PARTIES.

HON A. MUMA

VICE CHAIR

