



**Gitene v Ongera & another (Tribunal Case E044 of 2023)
[2024] KEBPRT 521 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 521 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E044 OF 2023
CN MUGAMBI, CHAIR
MARCH 13, 2024**

BETWEEN

VINCENT ONYANDO GITENE APPLICANT

AND

TORA ONGERA 1ST RESPONDENT

VINCENT AYIENDA OSORO 2ND RESPONDENT

RULING

Introduction

1. The Tenant's notice of motion dated 24.7.2023 seeks orders that the Respondents be restrained from in any way interfering with the Tenants tools of trade and/or his quiet possession of the premises, pending the hearing of the Reference. The Applicant/Tenant has also sought an order that the notices to vacate served upon him are defective. Costs of the Application have also been sought.

The Tenant's depositions

2. The Tenant's affidavit in support of his Application may be summarized as follows hereunder;-
 - a. That the Respondents have issued the Tenant with an illegal notice to vacate the premises known as Central Kitutu/mwanyanwa where the Tenant operates a business known as SHADES SPORTS BAR, hereinafter, the suit premises.
 - b. That the Tenant having paid all his rent at the commencement of the lease, is not in any rent arrears.
 - c. That the Tenant has carried out a lot of developments in the suit premises, the costs of which have not been reimbursed by the landlords.
 - d. That the Tenant is on the verge of being evicted.



- e. That the Respondents have stated that they will not accept rent money from the Applicant and are now threatening to cart away the Tenant's goods using auctioneers.
- f. That the Tenant stands to suffer irreparable loss and damages should the threat of eviction be actualized.
- g. That it is in the interest of justice that the Application be allowed.

The Landlord's depositions

3. The landlord's replying affidavit sworn by Mr. Vincent Ayienda Osoro may be summarized as follows:-
- (a) That the 2nd Respondent, herein referred to as the Respondent has not issued any illegal notice to vacate to the Tenant.
 - (b) That the Tenant's lease entered into on 1.10.2019 expired on 31.12.2022 while the lease agreement dated 17.7.2017 expired on 30.6.2023.
 - (c) That the Tenant continuous to occupy the premises illegally despite being served with a notice to vacate after the expiry of the lease period.
 - (d) That at paragraph 6 of the agreement dated 1.10.2019, the Tenant confirmed that he would not raise any claim after his lease period expired.
 - (e) That the Tenant has failed to adhere to the terms of the agreement dated 1.10.2019 specifically paragraphs 1,2,7 thereof.

Analysis and determination

4. The only issue that arises for determination in this Application is whether the Tenant/Applicant is entitled to the orders he has sought.
5. The resolution of the dispute between the parties herein revolve around the lease agreements dated 1.10.2019 and 17.7.2017.
6. The tenancy agreement dated 17.7.2017 expresses itself to run from 1.5.2017 to 30.6.2023 where the tenancy agreement dated 1.10.2019 expresses itself to run from January 2019 to 31.12.2022.
- The common thread in both agreements is that they have all expired and the question that arises in the circumstances is whether a tenancy relationship and for that matter, a controlled tenancy arose between the parties after both agreements expired.
7. There is no evidence that the Tenant paid any rent and/or that the landlord has accepted any rent from the Tenant after the expiry of both tenancy agreements. Indeed, the Tenant depones as follows at paragraph 7 of his supporting affidavit:-

“That the defendant has stated that he will not accept and/or collect rent moneys from the Applicant and is now through auctioneers harassing, intimidating and/or threatening the Applicant with carting away his goods and tools of trade unless he vacates.”

In the absence of any evidence that the landlords received any rent from the Tenant after the tenancy agreements had expired, it is my finding that the tenancies terminated by effluxion of time and no further tenancy was created between the parties, controlled or otherwise.



8. The tenant has complained that the notice to vacate issued to him by the landlords was defective. I have perused the notice to vacate dated 18.7.2023. The notice only seeks to inform the Tenant that his tenancy has expired and that the Tenant is in default of clause 2 of the tenancy agreement dated 1.10.2019. for purposes of context, clause 2 of the said agreement provides as follows:-

“After the expiry of the tenancy period, the Tenant undertakes to give vacant possession to the landlord and if the tenant wishes to continue using the premises, he shall inform the landlord and both parties shall agree on terms and conditions.”

9. I do not think that the landlords intended the above letter/notice to be the notice to terminate tenancy contemplated under the provisions of Section 4(2) of Cap 301. I say so because in instances where an agreement provides for its own expiry dates, then no notice is required to be served upon any of the parties to that agreement terminating the self-same agreement, it would be superfluous!

It is my finding therefore, that the landlords did not require to serve the mandatory notice under Section 4(2) Cap 301 in the circumstances of this case.

10. The Tenant has also made the claim that he has undertaken developments upon the demised premises and for which he has not been compensated. This claim by the Tenant has been made in his affidavit and does not form part of the prayers in the Applicant/Tenant's Application. It would be prejudicial to make any pronouncements on the same when the landlords were not required to answer to it by the Tenant's pleadings.
11. Having found that the tenancy between the parties expired and was never renewed, I do agree with the landlord's view that the continued stay of the Tenant in the suit premises without the consent of the landlord is illegal and amounts to trespass. I have further found that the tenancy agreements made provision for their own termination and none of the parties was therefore required to issue any notice for the termination of the said agreements.
12. Consequently, I do not find any merits in the Tenant's Application dated 24.7.2023 and the same is dismissed with costs to the landlords.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF MARCH, 2024

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Nyariki for the landlord

In the absence of the Tenant and Counsel

