



Marega v Adundo (Tribunal Case 8 of 2020) [2024] KEBPRT 1106 (KLR) (31 July 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1106 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 8 OF 2020
A MUMA, MEMBER
JULY 31, 2024

BETWEEN

PETER ODIAMBO MAREGA APPLICANT

AND

JOSEPH AWALA ADUNDO RESPONDENT

RULING

A. Parties And Representatives

1. The Applicant, Peter Odiambo Marega is the owner of the suit property being Plot 490 within Bondo-Usenge Road (hence the Landlord).
2. The firm of Okello.G.K Adipo Advocates represents the Applicant in the matter.
3. The Respondent, is the occupant of the suit property premised on the landlord's property (hence the tenant).
4. The firm of Otieno Achieng' Company Advocates represents the Tenant.

B. Background Of The Dispute

5. The parties entered into a Tenancy agreement dated 16th January 2016 which was for a period of 3 years and provided for a monthly rent of KShs.20,000.
6. The landlord filed a notice to terminate the tenancy agreement dated 23rd January 2020 stating the reason that the premises was in a deplorable situation therefore it needed to be renovated.
7. The tenant filed an opposition to the notice to terminate through a reference dated 11th May 2020.
8. The tribunal issued orders dated 11th May 2020 that; the application by the tenant be certified the application as urgent, issued a temporary injunction restricting the landlord from evicting the tenant, issued costs in the suit and set a hearing date for the application.



9. The landlord then filed an application dated 27th November 2020 seeking orders that the application be certified as urgent, that the injunction orders issued be set aside and sought rent arrears to be deposited by the Tenant pending hearing and determination of the application.
10. The tribunal issued orders dated 15th December 2020 in which the application was certified as urgent and the application be served and set for hearing.
11. The hearing was done on 23rd January 2024 and the tribunal issued orders of even date that the Tenant's application be dismissed for want of prosecution, the Tenant to pay all arrears due by 30th January 2024 (KShs.271,000).
12. The Tenant filed a Notice of motion application seeking orders inter alia for the orders issued on 23rd January 2024 to be set aside and a stay of execution of the ruling issued on 23rd January 2024.
13. The tribunal issued orders dated 2nd February 2024 in which the matter was certified as urgent and a stay of execution was issued for the orders issued on 23rd January 2024. The matter was issued with a fresh hearing date.
14. The landlord filed a replying affidavit dated 6th May 2024 highlighting the rent arrears owed.
15. The parties have not renewed the agreement since it expired sometime in 2019.

C. The Landlord's Claim

16. The Landlord claims that the Tenant has defaulted in paying rent from 2020-2024 despite the continued stay in the premises therefore claiming rent arrears totaling to KShs.307,000.
17. He also avers that the premises is in a deplorable state and is due for renovations.
18. It is therefore the Landlord's case that he should be allowed to distress for rent and evict the tenant from the premises.

D. The Tenant's Claim

19. The Tenant claims that he has been paying rent to the premises since the tenancy agreement was entered into to the year 2024.
20. It is the Tenant's case that the termination notice issued by the Landlord is invalid.
21. The Tenant therefore claims that the Landlord should not be allowed to distress for rent or evict him from the premises.

E. List Of Issues For Determination

22. I have carefully perused the material placed before this court by the parties and it is my considered opinion that the following issues fall for determination:
 - a. Whether there are any arrears in rent owing to the Landlord
 - b. Whether the termination notice issued by the landlord is valid

H. Analysis & Determination

- a. Whether there are any rent arrears owing to the landlord



23. The parties entered into a tenancy agreement dated 16th January 2016. The same expired sometime in 2019 and there has been no other agreement between the parties.
24. The tribunal Landlord continued receiving rent from the tenant therefore creating a periodic controlled lease under Section 60(2) of the [Land Act](#) as defined below;

“A lessor who accepts rent in respect of any period after the lease has been terminated or the term of the lease has expired, shall not, by reason of that fact, be deemed to have consented to the lessee remaining in possession of the land, or as having given up on any of the rights or remedies of the lessor against the lessee for breach of a covenant or condition of the lease, and if the lessor continues to accept rent from a tenant who remains in possession for two months, after the termination of the lease, a periodic lease from month to month shall be deemed to have come into force.”

25. The Landlord avers that he has not received any rent from the Tenant since 2020. He has produced a schedule of payment as well as bank statements evidencing the amounts that the tenant has paid.
26. The Tenant claims that the Landlord provided the contact of a colleague in whose account he was supposed to deposit a portion of the rent money. He has however not provided any evidence to show the Landlord issuing such communication.
27. The Tribunal while perusing the file took the liberty to calculate the arrears as per the evidence provided and found that the same amounts to KShs.480,000, the landlord has claimed KShs.307,000.
28. Despite the above, the Tribunal cannot act suo moto in the issuance of orders regarding the amount sought in arrears. As such, the Tribunal shall only award the Landlord KShs.307,000 in arrears as claimed.

b. Whether the termination notice issued by the landlord is valid

29. The Act at section 4(2) provides that:

“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.”

30. In the case of *Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited*, Civil Appeal No. 203 of 1994 it was stated as follows;

“The Act lays down clearly and in detail, the procedure for the termination of a controlled tenancy. Section 4(1) of the Act states in very clear language that a controlled tenancy shall not 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 specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the tenant. The notice must also specify the ground upon which termination is sought. The prescribed notice in Form A also requires the landlord to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice.”



31. Section 7 of the Act provides for the grounds within which Landlord is allowed to issue a termination notice and at subsection (f) it provides as follows;

“Where under section 4 of this Act served a notice of termination of a controlled tenancy on the tenant, the grounds on which the landlord seeks to terminate such tenancy may be such of the following grounds as are stated in the aforesaid notice—

That on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises;”

32. The Landlord in the termination notice stated that he intended to renovate the premises. Based on an inspection report dated 28th March 2023, it was stated that the roof was leaking at the main bar and lavatory areas. The conclusion of the report therefore was that the premises should be renovated.

33. Based on the analysis above, the Landlord should be granted vacant possession in order to renovate the premises.

I. Orders

34. The upshot is that the Landlord’s Reference and Application dated 23rd January 2020 is allowed in the following terms;
- a. The Tenants to pay all rent arrears due by 30th July 2024 totaling to KShs.307,000.
 - b. The Landlord to take vacant possession of the premises starting 5th August 2024.
 - c. The OCS Bondo police station to assist in compliance with the orders.
 - d. Costs in the cause.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

**RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 31ST DAY OF JULY 2024
IN THE PRESENCE OF OTIENO FOR THE TENANT AND ALEGO FOR THE LANDLORD.**

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

