



**Chepkogei t/a Eunicog Enterprises v Kaino & another (Tribunal Case  
E110 of 2023) [2024] KEBPRT 812 (KLR) (10 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 812 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E110 OF 2023  
P MAY, MEMBER  
JUNE 10, 2024**

**BETWEEN**

**EUNICE CHEPKOGEI T/A EUNICOG ENTERPRISES ..... TENANT**

**AND**

**SAMMY KIPRUTO KAINO ..... 1<sup>ST</sup> RESPONDENT**

**ALLAN & BRADLEY COMPANY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The present proceedings commenced through the reference dated 21<sup>st</sup> November, 2023. Contemporaneous with the reference, the tenant filed an application on an even date seeking for a plethora of orders against the respondents including orders of temporary injunction against the respondents and a determination on whom the tenant had to pay rent to.
2. The application was placed before the Tribunal on 23.11.2023 whereby interim orders were issued in favour of the tenant. The application is premised on the grounds set on its face and the further grounds enumerated in the affidavit sworn by the tenant.
3. The tenant affirmed that she is a tenant on the demised premises where she operates a shop. She stated that the tenancy has not been reduced into writing thus there exists controlled tenancy as defined under [CAP 301](#). The tenant stated that they received a letter from the 2<sup>nd</sup> respondent requiring them to pay rent to them. She states that owing to the confusion it became difficult to ascertain who was rent payable leading to the 1<sup>st</sup> Respondent issuing instructions to Chartless Auctioneers to levy distress.
4. The tenant challenged the levying of distress for being unlawful as it did not conform with the provisions of [CAP 301](#). The 1<sup>st</sup> respondent opposed the application by filing the replying affidavit sworn on 16<sup>th</sup> January, 2024. The 1<sup>st</sup> Respondent has taken a multi-faceted approach in opposing the application. He states that the application is frivolous and vexatious. He confirmed that there exists



- a tenancy relationship between him and the tenant. He states that he is a stranger to the issues raised against the 2<sup>nd</sup> respondent as he is not a party to the tenancy agreement between the tenant and himself.
5. The parties elected to have the application canvassed by way of written submissions. The Tribunal has considered the application, the response thereto and the submissions on record and wish to proceed as follows:
  6. The parties buttressed their respective positions on the triple requirements which were set for the grant of temporary orders of injunction in the celebrated case of *Giella V Cassman Brown & Company Limited*, (1973) 358 EA as follows:
    - (i) The applicant must establish a prima facie case with a probability of success.
    - (ii) The applicant must then demonstrate that he or she stands to suffer irreparable loss or damage which cannot be adequately compensated by an award of damages.
    - (iii) Where there is doubt on the above, that the balance of convenience tilts in favour of the applicant
  7. A prima facie case was defined in the case of; *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* (2003) eKLR at page 8/10 by Bosire JA (as he then was) to mean:-“So what is a “prima facie case”. I would say that in civil cases, it is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.
  8. Guided by the foregoing decisions, I am required to determine whether the tenant has brought himself within the principles of granting an injunction based on the materials presented before me.
  9. The present dispute as stated earlier was precipitated by the notice to proclamation issued by the auctioneer. The parties herein do not dispute that the tenant is a protected tenant and it is therefore expected that the Landlord would comply with the prerequisites set out in sections 4(1), (2), (4) & (5) of the *Landlord and Tenant (Shops, Hotels and Catering Establishment) Act* which provide that:
    4. “Termination of and alteration of terms and conditions in controlled tenancy
      - 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 conditions or right or service enjoyed by the tenant of any such tenancy shall be altered, other 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 on 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. Provided that—i.where notice is given of the termination of a controlled tenancy, the date of termination shall not be earlier than the earliest date on which, but for the provisions of this Act, the tenancy would have, or could have been, terminated.....
      - 5)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. From the assessment of the pleadings and the submissions by the parties, it is not disputed that the auctioneer issued a proclamation notice dated 7/11/2023. It is evident that the *Landlord and Tenant (Shops, Hotels & Catering Establishment) Act* Cap 301 Laws of Kenya lays down clearly and in detail, the procedure for the termination of a controlled tenancy.
11. The present dispute is crosscutting to the question of ownership which cannot be determined at this preliminary stage. The tenant has proven that they stand to suffer irreparable loss in the event the orders sought are not granted. The failure by the 2<sup>nd</sup> Respondent to participate in the proceedings has denied the Tribunal an opportunity to evaluate the veracity of the allegations of the change in ownership which led to letter on change of payment points. The present litigation cannot be determined in a piecemeal manner which will expose the tenant to vicious litigation.
12. In view of the foregoing, the following orders commend itself:
  - a. The application dated 21<sup>st</sup> November, 2023 is allowed in terms of prayer 2.
  - b. The tenant to deposit the rent during the course of the present litigation to the Tribunal.
  - c. The parties to fix the hearing of the reference on priority basis.
  - d. The tenant to serve a copy of this ruling upon the 2<sup>nd</sup> Respondent.
  - e. Each party to bear their own costs.

Dated, signed and delivered virtually at Nairobi this 10<sup>th</sup> day of June, 2024

**HON. PATRICIA MAY**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of;

Muia for the Tenant

Miss Kosgey for the Respondent

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