



**Kingori Isaac Kega (The Chairman Kenya African Othaya Bus
Station Union, K.A.O.B.U) v Kimani (Tribunal Case E013 of 2024)
[2024] KEBPRT 1358 (KLR) (At Nairobi) (1 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1358 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
AT NAIROBI
TRIBUNAL CASE E013 OF 2024
A MUMA, MEMBER
JULY 1, 2024**

BETWEEN

**KINGORI ISAAC KEGA (THE CHAIRMAN KENYA AFRICAN OTHAYA BUS
STATION UNION, K.A.O.B.U) APPLICANT**

AND

MARTHA WANJIKU KIMANI RESPONDENT

RULING

A. Parties and Representatives

1. The Applicant, Kingori Isaac Kega is the Chairman of Kenya African Othaya Bus Station Union (K.A.O.B.U), the Landlord herein and the duly registered owner of plot no. Block 11/26 situated within Nyeri County (the “suit property”) and who rented out the suit property to the Tenant (“the Landlord”).

In this matter, the Landlord appears in person.
2. The Respondent, Martha Wanjiku Kimani, is the Tenant who rented the suit property for purposes of carrying out business activities (“the Tenant”).
3. The firm of M/S Karweru & Co. Advocates represents the Tenant in this matter.

B. The Dispute Background

4. The Landlord issued a termination notice dated 9th October 2023 to the Tenant seeking vacant possession of the suit property due to accrued rental arrears.



5. Upon lapse of the termination notice, the Landlord moved this Honourable Tribunal vide a Reference and Application evenly dated 24th January 2024 seeking termination of existing tenancy, eviction orders and permission for breaking in.
6. On 26th January 2024, the Tribunal considered the Landlord's Application and certified the matter as urgent thereby directing the Landlord to serve the Application prior to a hearing on 23rd February 2024.
7. Subsequently, the Landlord served the Tenant with the Application dated 24th January 2024 and thereafter filed a return of service vide an affidavit sworn and dated 7th February 2024.
8. During the hearing on 20th March 2024, the Landlord testified that service was effected to the Tenant. However, the Tenant remains in occupation of the suit property. Further, the Landlord testified that the Tenant has accrued 2 months' rent arrears. In response, the Tenant testified that she paid partly Kshs. 2,000/= on January in cash and partly, a sum of Kshs. 16,000/= via Mpesa as follows: on 1st January 2024 paid Kshs. 6,000/= and later paid Kshs. 8,000/= on 1st March 2024. Thereafter, the Tribunal directed the Tenant to respond in 14 days and pay Kshs. 8,000/= as rent for April before the next hearing.
9. On 17th March 2024, the Landlord testified that the lease had expired and the rent remained outstanding. In opposition, the Tenant testified that she paid Kshs. 8,000/= as rent. Accordingly, the Tribunal ordered Tenant to pay rent for the month of April and file evidence of the same.
10. During the hearing on 29th April 2024, the Landlord testified that rent has been paid until January. Consequently, hearing was stood over due to technical problems experienced in uploading court documents by the Tenant.
11. Following the testimonies from both parties, the matter was set down for Ruling on 17th June 2024.

C. Landlord's Claim

12. In paragraph 3 of the Supporting Affidavit, the Landlord avers that on 19th October 2023, the Landlord served the Tenant with the termination notice dated 9th October 2023. As such, the Landlord has annexed a copy of the return of service as evidence.
13. The Landlord avers that upon lapse of the termination notice, the tenancy expired on 1st January 2024. However, the Landlord stands to suffer great loss since the Tenant refused to give up vacant possession of the suit property.
14. Additionally, in paragraph 5 of the Supporting Affidavit, the Landlord deposed that the Tenant has accrued rent arrears of Kshs. 22,000/=.
15. During the hearing on 15th May 2024, the Landlord testified that the Lease Agreement previously entered between the parties had not been renewed as such, the period of the termination notice had lapsed. The Landlord also testified that since the Tenant failed to pay rent for February and March, the Tenant should abstain from making any payments.

D. Tenant's Claim

16. In response, the Tenant concedes entering into a Lease Agreement (the "Agreement") dated 31st January 2023 for a term not exceeding 1 year subject to renewal.



17. Upon termination of the Agreement, the Tenant avers that she proceeded by conduct to renew the contract. In paragraphs 3 and 4 of her Replying Affidavit, the Tenant deponed that she paid Kshs. 7,000/= as rent for the month of February 2024 for which she attached payment receipt. Additionally, the Tenant deponed that she paid the balance of Kshs. 1,000/= in cash to the Landlady.
18. In paragraph 4 as read with 5 of the Replying Affidavit, the Tenant denies having any pending rent arrears having made good the rent due as at 8th May 2024.
19. The Tenant deponed that the Agreement was entered on 31st January 2023 thus the assertion by the Landlord that the Agreement expired on 1st January 2024 is incorrect. The Tenant also avers under paragraph 10 of the Replying Affidavit that there is no tangible evidence on record as proof that the termination notice was served upon the Tenant.
20. During hearing on 15th May 2024, the Tenant testified that she has been remitting rent from January until May. She also alleges that the suit property has been damaged by fire caused by the Landlord. Further, the Tenant avers that there is no evidence to account as proof the said rent arrears alleged by the Landlord of Kshs. 22,000/=.
21. The Tenant avers that she has been deprived quiet and peaceful occupation of the suit property since the Landlord took away her token meter. She prays to be granted quiet possession of the suit property.

E. Jurisdiction

22. The jurisdiction of this Honourable Tribunal is not disputed by the parties.

F. Issues for Determination

23. Upon consideration of materials placed before this Court, I find that the following issues fall for determination:
 - i. Whether there is an existing tenancy relationship;
 - ii. Whether the termination notice was properly served; and
 - iii. Whether there is any outstanding rent arrears.

G. Analysis And Findings

i. Whether there is an existing tenancy relationship;

24. Section 2 of the Landlord and Tenant Shops Hotels and Catering Establishments Act Cap 301 Laws of Kenya (hereinafter “the Act”) defines a controlled tenancy as;
 - 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.

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;



25. By dint of this provision, tenancy can be construed from an agreement either expressly in writing or orally by implication.
26. In this case, it is not in dispute that the Landlord and the Tenant entered into a binding Agreement dated 31st January 2023 to let out the suit property for a term of 1 year effective from 1st January 2023. Tenant agreed to pay a monthly rent of Kshs. 8,000/=.
27. Unfortunately, the Agreement was never left to run its full course. The Landlord issued a termination notice in writing dated 9th October 2023 effective 1st January 2024 as required under clause 2(a) of the said Agreement. Accordingly, I confirm that the Tenant was duly served with the termination notice since the Landlord has adduced an affidavit of service as proof of service under protest since the Tenant declined to sign.
28. During the subsistence of the notice, the Tenant did not issue any notice to the Landlord for renewal of the Agreement. Consequently, upon lapse of the notice period, the Agreement was terminated as such there was no tenancy relationship.
29. Accordingly, the Tenant remained in the suit property and continued to allegedly make regular monthly payments as rent. However, the statements annexed as evidence in the Tenant's Replying Affidavit dated 14th May 2024 makes reference to one Charles Maina Mahugu as the customer's name who is a stranger to the main issue at hand. There is no plausible justification to clarify on the nature of the relationship between the Tenant and the said third party.
30. In light of the foregoing, the Tribunal is not in a position to infer whether there was an implied tenancy relationship by conduct since the rent proof provided has no link to the Landlord and the Tenant. Therefore, it is safe to hold that there is no tenancy relationship existing between the Landlord and the Tenant.

ii. Whether the termination notice was properly served

31. From the preceding paragraphs, the validity of the termination notice is not in dispute. However, the Tenant denies service of the said notice by the Landlord.
32. Based on the evidence adduced, I am satisfied that the Tenant was duly served with the said termination notice. I also confirm that there is an affidavit of service on the record sworn by a duly licensed court process server as evidence of service under protest.

iii. Whether there are any outstanding rent arrears

33. Based on the facts and the evidence adduced, the Landlord alleges that the Tenant is in arrears of Kshs. 22,000/=.
34. Section 3 (3) of the Act provides:

“(3) The landlord of a controlled tenancy shall keep a rent book in the prescribed form, of which he shall provide a copy for the tenant and in which shall be maintained a record, authenticated in the prescribed manner, of the particulars of the parties to the tenancy and the premises comprised therein, and the details of all payments of rent and of all repairs carried out to the premises.”
35. In respect of the above provision, the Landlord has not adduced any statements of accounts or a rent book in support of their claim for rent arrears.



36. In the same vein, the Tenant has not adduced any receipt as proof of payments of rent. However, the Tenant has produced statements in the name of Charles Maina Mahugu who is a stranger in this case. Accordingly, the Tribunal is not in a position to determine whether or not the Tenant has paid rent as rent proof provided has no link to the Landlord and Tenant herein.

H. Orders

37. In the upshot, the Landlord's Reference and Application dated 24th January 2024 is allowed in the following terms:
- i. Tenant to clear any outstanding rent arrears within 14 days from the date hereof;
 - ii. Landlord shall be at liberty to distress for rent arrears and take back vacant possession of the suit property failure to which Landlord is granted breaking orders;
 - iii. OCS Nyeri Police Station to ensure compliance;
 - iv. Each party shall bear their own costs.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

**RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 1ST DAY OF JULY 2024
IN THE ABSENCE OF THE PARTIES.**

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

