



**Kiangi v Danson (Tribunal Case E204 of 2022)
[2023] KEBPRT 1240 (KLR) (10 March 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1240 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E204 OF 2022
CN MUGAMBI, CHAIR
MARCH 10, 2023**

BETWEEN

AUGUSTINE KIANGI TENANT

AND

CONSOLATA M. DANSON LANDLORD

RULING

1. The tenant's reference/complaint dated 12.9.2022 is brought under the provisions of Section 12(4) of [Cap 301](#) and raises the following complaints:
 - a. That on 12.9.2022, the Respondent illegally stormed into the tenant's rented school premises and placed her locks on the premises thereby denying the tenant access to the suit premises and from operating the school.
 - b. That the landlord's actions have subjected the tenant to untold suffering and pain and daily loss of business.
2. The tenant has sought the following reliefs in his reference;
 - a. That the landlord/Respondent be compelled to open the school premises or in the alternative, the tenant be granted leave to break open the doors to the suit premises.
 - b. That the landlord be restrained from letting the premises or evicting the tenant from the premises.
 - c. That the tenant be compensated for loss of daily income for the period the suit premises remained closed.
 - d. That the tenant be exempted from paying rent for the period the suit premises remained locked.



- e. That the orders to be obtained be enforced by the OCS, Diani police station.
 - f. That the costs of the application be borne by the landlord/Respondent.
3. The reference by the tenant proceeded for hearing orally on 27.1.2023 when the parties testified but called no witnesses in support of their cases.

The Tenant's case

- 4. The tenant testified that he has been a tenant of the Respondent in the suit premises since 1.6.2022 and the parties have a written agreement for three (3) years with an automatic renewal clause.
- 5. The tenant also testified that at the commencement of the tenancy, the parents of the landlady were in the premises and the landlady requested that they be allowed to remain therein for a period of two months.
- 6. The tenant further testified that on 3rd, 4th and 5th June 2022, the landlady came to the suit premises with strangers and requested that they run the school jointly with the tenant but the tenant declined because the terms of his tenancy agreement were clear and not agreeable to a joint operation.
- 7. It was the tenant's further testimony that on 8.06.2022, the landlady issued her with a letter terminating the lease purporting that her co-owner of the premises wanted to carry on some other business other than the school. The landlady thereafter brought in other strangers into the school compound and rented out some of the units as sleeping quarters. When the tenant protested, the landlady told him that she was free to deal with her property.
- 8. It is also the tenant's evidence that due to the actions of the Respondent, parents started removing their children from school. The tenant therefore prayed that the court removes the strangers from the suit premises for the duration of the lease as his business has suffered losses due to the issues raised.
- 9. The tenant on cross examination by the landlady stated that it was not the strangers in the suit premises who are making him not to pay rent, although they are affecting his business. The tenant further stated that he is willing to pay the rent and that he only owes the rent of October, November and December. The tenant is only willing to pay rent once the strangers in the premises have vacated. The tenant also requested the court to consider his pleadings and order that he be compensated for his losses.

The landlady's case

- 10. The landlady testified that in the middle of May 2022, the tenant approached her requesting to lease a school premises, the tenant at that time found the dining hall occupied by the church.
- 11. The landlady also testified that the school premises had nine classrooms out of which two are occupied by the family of the landlady. The church also occupies one classroom where it stores its music equipment.
- 12. Out of the classrooms, the landlady has also stored her furniture in two classrooms and therefore set apart five classrooms where the tenant agreed to occupy. The tenant also agreed that the landlady's nephew could lie in an upper room.
- 13. The landlady also testified that the church does not interrupt the operations of the school and the tenant should not complain about the church.
- 14. The landlady testified that she is not interested in the rent but she only wants the tenant out of the premises as she is tired of the tenant. The tenant is free to vacate the premises with is property.



15. On cross examination, the landlady stated that the tenant knew that there were people in the premises when he rented the premises.
16. The landlady further stated under cross examination that the tenant paid Kshs. 20,000/= in May 2022 and Kshs. 10,000/= in August and that the tenant did not pay rent even after the court ordered him to do so.

Analysis and determination

17. Section 12(4) of [Cap 301](#) provides as follows:-

“In addition to any other powers specifically conferred on it by or under this Act, a tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant and may make such order thereon as it deems fit.”

18. I quote the above provision of the law at the very outset because from the evidence of the parties, it is important to establish whose complaint the Tribunal is invited to investigate in this case. It is clear from the outset that the landlady has not filed any complaint before the tribunal and the only complaint for investigation by the Tribunal is the one filed by the tenant under Section 12(4) of [Cap 301](#).
19. The landlady in her testimony seems to suggest that the tenant ought to vacate the premises and take his property with him. If indeed the landlady is desirous of having the tenant vacate the premises and this being a controlled tenancy, then the proper procedure to achieve such an end is the one found under the provisions of Section 4(2) of [Cap 301](#).

The landlady cannot seek to terminate the tenancy between herself and the tenant orally in court during the hearing of the case.

20. Having cleared this misapprehension of the law on the part of the landlady, the only issue for determination is the complaint by the tenant.
21. The tenant’s complaint appears to me to be that the landlady has brought strangers to the suit premises and that they are affecting the operations of the school. The complaint that the landlady has closed the school and denied the tenant and school children access does not seem to have been seriously pursued by the tenant as he led no evidence in that regard.
22. As regards the strangers in the premises, the landlady has testified that as at the time the tenant took up the premises, he found the relatives of the landlady already resident in the premises and the church was also already there. It is the evidence of the landlady that the tenant took up possession of the suit premises with the full knowledge of the occupation thereof by third parties. The tenant in his testimony confirms this position when he states that the parents of the landlady were in the premises but were only to remain there for a period of two months. I am therefore convinced that the tenant took up the premises while there were third parties therein and he accepted the tenancy without first seeking to have the said third parties removed from the premises.
23. The lease agreement, exhibited as AK2 in the affidavit of the tenant does not state anything as regards the presence of third parties in the premises nor has it made any provision as to how to deal with any such eventuality.
24. It is an implied term in controlled tenancies that the lessee shall have quiet enjoyment of the demised premises provided that he complies with express or implied covenants. In this case, whereas the tenant is entitled to quiet enjoyment of the demised premises, he can only be entitled to such enjoyment of the five classrooms which the landlady rented out to him and not to the classrooms occupied by the



landlady and her relatives. To that extent, the tenant is justified in applying for restraining orders against the landlady.

25. The tenant did not lead any evidence as to the daily losses he incurred as a result of the landlady's closure of the suit premises neither did he lead any evidence as to the number of days that the premises remained closed. These prayers in the tenant's complaint are therefore dismissed for want of proof and particularity.
26. I do note that the landlady had issued the tenant with a termination of tenancy notice dated 7.6.2022. I have perused the same and do find that it does not amount to the statutory notice under Section 4(2) of the Act [Cap 301](#).
27. Pursuant to Section 12(4) of [Cap 301](#) and taking into account the evidence of the parties, I do make the following orders;-
 - a. That the landlady is restrained from illegally terminating the tenancy between herself and the tenant.
 - b. That the landlady shall grant to the tenant quiet enjoyment and possession of the five classrooms rented out to the tenant.
 - c. That the tenant shall pay all outstanding rent arrears within the next thirty (30) days failing which the landlady will be at liberty to levy distress for rent.
 - d. That the landlady is at liberty to issue a fresh notice to terminate tenancy forthwith if she so desires.
 - e. That each party shall bear its own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 10TH DAY OF MARCH 2023

HON. CYPRIAN MUGAMBI

CHAIRPERSON

