



**Maranga v Samburu (Tribunal Case E478 of 2023)
[2023] KEBPRT 645 (KLR) (Civ) (24 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 645 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E478 OF 2023
A MUMA, AG. CHAIR
OCTOBER 24, 2023**

BETWEEN

CATHERINE MARANGA APPLICANT

AND

MOGESI BETTY SAMBURU RESPONDENT

RULING

A. Parties & their Representatives

1. The Applicant, Catherine Maranga (hereinafter “the tenant”), is the tenant occupying the Premises located at Nairobi, High rise along Mbagathi Way that is the subject matter of the present suit.
2. The applicant appears in person in these proceedings.
3. The respondent, Mogesi Betty Samburu, (hereinafter “the Landlady”) herein is the Landlady of the Premises that is the subject matter of the present suit.
4. The Firm of Bw’oigara, Getange & Co. Advocates represents the Landlady in this matter.

B. Dispute Background

5. On May 17, 2023, the Tenant filed a reference and an application seeking several orders including; that the court be pleased to certify the matter urgent, and to restrain the respondents from evicting, harassing and intimidating him pending the hearing and determination of the reference and the application dated May 17, 2023.
6. The Tenant also sought Orders setting aside the invalid notice dated May 17, 2023 in order to allow her to carry on with her business, as well as Orders as to costs of the reference and the application.



7. The court, having considered the tenant's reference and application, issued interim orders dated 18th May 2023 certifying the matter as urgent and restraining the Landlady and/or her agents, servants and employees from unlawfully intercepting and interfering with whatsoever with the Tenant's quiet occupation and lawful enjoyment of the suit premises pending the hearing of the application inter-partes.
8. Further, the Court ordered that the OCS High Rise Police Station to enforce the aforesaid Order and that the Tenant serves the Landlady for hearing on June 14, 2023.
9. In response to the tenant's reference and application, the landlady filed a replying affidavit dated June 5, 2023.

C. Claim and Defence

10. In the reference and the application both dated May 17, 2023, the Tenant claims that on June 1, 2022, she rented the suit premises and has been paying rent as required under the tenancy agreement. However, the Landlady has been interfering with her quiet enjoyment of the suit premises by continually harassing and threatening to evict her and even issued her with an invalid notice of eviction dated May 17, 2023.
11. The Tenant states that the Landlady's intention to evict her is malicious. Further, she states that due to the threats of eviction, she is mentally disturbed and embarrassed with the act of the Landlady and that consequently, her customers have shifted from her services.
12. The Tenant also claims that the intended eviction is a contravention of the *Landlord and Tenant (Shops, Hotels & Catering Establishments)* cap 301 Laws of Kenya and that it is in the interest of justice that orders sought in her application be granted.
13. It is the Landlady's case that under the tenancy agreement, the Tenant is under an obligation to be making consistent, timeous and monthly payments of KShs. 12,000.00 to be paid in advance on or before every 5th day of the following month without any deductions whatsoever. However, the tenant has failed to meet this obligation by continuously making late and irregular payments and is in default of monthly payments for the months of November 2022, December 2022 and January 2023.
14. The Landlord states that due to the late and irregular payments, she issued a one-month termination notice to the Tenant as per clause 2 of the tenancy agreement dated 29th May 2022, effective from 17th May 2023.
15. The Landlady further states that the Tenant has greatly misled this Court by alluding that she has been paying rent. This is for the reason that the Tenant is in arrears and since February 2023, she has been making irregular payments with the intention of covering her arrears without an intention of clearing the same. That as a result of the irregular payments, the arrears accumulated to a sum of KShs. 54,600.00.

D. Issues for Determination

16. I have carefully analyzed all the Pleadings filed and the relevant evidence adduced before honorable Court. There being no dispute as to the Jurisdiction of this Court, I shall then proceed to the merit of the application before me.
17. I considerably find that the sole issue that falls for determination is:
 - i. Whether the notice of termination dated 17th April is valid



- ii. Whether the Tenant is in rent arrears

E. Analysis of the Law

i. Whether the notice of termination dated 17th April is valid

18. The existence of a landlord-tenant relationship is based on a tenancy agreement dated 29th May 2023. The agreement provides for a termination clause other than for breach of covenant making the relationship a controlled tenancy.
19. Termination of controlled tenancies is regulated by section 4 of the *Landlord and Tenant (Shops, Hotels & Catering Establishments)* cap 301 Laws of Kenya. The said provision obligates a landlord who wishes to terminate a controlled tenancy to issue a notice of termination of not less than two (2) months, failure to which such notice shall not take effect.
20. However, the provision contains a proviso which recognizes the freedom of contract which allows parties to a contract to bargain and agree on terms of the agreement as they desire. Under section 4 (4) (iii) of cap 301, parties to a tenancy may agree in writing to any lesser period of notice. The said notice must be issued within the validity of the agreement.
21. It is important to note that the validity of this agreement has not been challenged by the tenant which leads me to presume that the parties intended to be bound by the terms and conditions contained therein.
22. Additionally, the term of the said agreement is one (1) year which lapsed on May 29, 2023, having taken effect on May 29, 2022. The notice of termination was issued on April 17, 2023 with an effective date of May 18, 2023, a period that is clearly within the validity of the said agreement.
23. I have carefully analyzed the notice of termination dated 17th April 2023. I find that the same is valid for the reason that it was issued pursuant to a duly executed tenancy agreement and that it was issued within the validity of the tenancy agreement.

ii. Whether the Tenant is in rent arrears

24. The Landlady states that the Tenant is in arrears of KShs. 54,600.00 for the months of December 2022 to April 2023. Further, she states that she has not received any further payments since 16th March 2023 and has attached Mpesa statements.
25. I have taken time to peruse the said statements for transactions made between 18th February 2023 and 17th May 2023. I find that the amounts paid in by the Tenant are as indicated in the Landlords replying affidavit dated 5th June 2023.
26. I take note that the said statement shows that the last payment to the Landlady by the Tenant is indeed 16th March 2023 where she paid KShs. 1,500.00.
27. Further, I note that the Tenant indicated before this Honorable Court she was yet to pay rent for the months of June and July, admitting that she is in arrears. She however paid Kshs. 15,000.00 as directed by this Court which was confirmed by the Landlady on 16th June 2023.
28. The Tenant has attached her Mpesa statement approved on 17th May 2023 demonstrating payments made to the Landlady between the month of May 2022 and February 2023.
29. In light of the statements filed by both the Tenant and the Landlady, I find that the Tenant made irregular payments and defaulted for the months of November 2022, January 2023 and the months



of April 2023 to July 2023. In the months of February 2023, March 2023 and June 2023, the Tenant made payments excessive of the monthly rent which I believe were meant to cover the arrears.

30. An analysis of the said payments demonstrates that the amount of arrears owing between the months of November 2022 and July 2023 are KShs. 47,600.00.

Determination

31. The upshot is that the Tenant's reference and Notice of Motion Application dated 17th May 2023 are dismissed in the following terms:
- a. The Landlady's notice of termination dated 17th April 2023 is valid.
 - b. Arrears of Kshs. 47,600.00 for the months of November 2022 to July 2023 and any other arrears owing between August 2023 and October 2023 be cleared by 31st November 2023 failure to which the Landlady is at liberty to distress for rent.
 - c. Landlady at liberty to take over vacant possession of the suit premises with leave to break in if the Tenant would have not moved out by 30th November 2023 with the assistance of OCS Highrise.
 - d. Each party to bear its own costs.

HON A. MUMA

Ag Chair/Member

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Ruling dated, signed and delivered virtually by Hon. Muma this 24th day of October 2023 in the Presence of Aviga holding brief for Getange for the Landlord. No appearance for the Tenant.

HON A. MUMA

Ag Chair/Member

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