



**Mukei v Mutua (Tribunal Case E851 of 2022)
[2023] KEBPRT 191 (KLR) (Civ) (4 April 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 191 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E851 OF 2022
GAKUHI CHEGE, VICE CHAIR
APRIL 4, 2023**

BETWEEN

JULIET SYOVATA MUKEI TENANT

AND

TIMOTHY MUSAU MUTUA LANDLORD

RULING

1. Through a complaint dated September 22, 2022, the tenant moved this Tribunal under Section 12 (4) of [cap 301](#), Laws of Kenya claiming that on September 15, 2022, the caretaker of the landlord acting on his instructions went to the suit premises located in Mlolongo and served her with a notice to terminate or alter terms of tenancy dated July 4, 2022.
2. According to the tenant, the said notice is legitimate and in the prescribed form under Section 4(2) of [cap 301](#), Laws of Kenya but the same was however served late thereby extinguishing her right of responding thereto. The said action was calculated to ensure that she was unable to file a reference as required under Section 6(1) of the [Act](#) in opposition thereto. It therefore crystalized the landlord's right of rent increment on the effective date.
3. The tenant simultaneously filed a motion of even date seeking for restraining orders against the landlord from interfering with her tenancy in the suit premises and suspending the rent increment from Kshs 12000/- to Kshs 16,000/- per unit.
4. In her supporting affidavit of even date, the tenant deposes that she has been a tenant at the suit premises paying a total rent of Kshs 35,000/- for three units to the landlord. On September 15, 2022, the landlord's caretaker one Samson Mwatu went to the suit premises and served notice of increment of rent upon the tenant marked as annexure 'A'. The same was expressed to take effect on October 1, 2022 and is in the prescribed form.



5. The tenant deposes that the said action was intended to ensure that she was unable to file a reference under Section 6(1) of [cap 301](#), Laws of Kenya in opposition to the termination notice.
6. The tenant deposes that the suit premises is in a deplorable condition as not renovation has taken place for the last 7 years to warrant the landlord's increment of rent. The tenant however admits that the market value of the surrounding area had appreciated but the condition of the premises remained the same for the last 7 years.
7. During times of heavy rainfall, the tenant deposes that she is forced to close business on account of poor drainage and leaking roof. The lavatories are in need of repairs as there was no sanitary facilities for her clients thereby resorting to alternative facilities.
8. The tenant therefore prays that it is in the interest of justice that the orders sought be granted as she was willing to continue paying rent at the current rate. Interim orders were given on September 27, 2022 restraining the landlord from interfering with the tenancy pending hearing inter-partes on October 25, 2022.
9. The application is opposed through a replying affidavit sworn by the landlord on November 7, 2022 wherein it is admitted that the tenant occupies three rooms at a monthly rent of Kshs 12000/- each since 2017 February.
10. He deposes that the tenant was served with notice on July 6, 2022 as per the affidavit of service of Arphaxad M. Kiema sworn on July 7, 2022 in his capacity as a court process server. The affidavit is marked as annexure 'TMM1'. Besides the Applicant, another tenant was also served with a similar notice.
11. The second tenant complied with the notice after calling the landlord in September 2022 but the applicant evaded the landlord's calls until they met virtually in BPRT NO E736 of 2022 wherein she was ordered to pay Kshs 84,000/- in outstanding electricity bills.
12. The tenant did not file a reference and as such, the landlord deposes that she has not come to court with clean hands as she came to court in this matter when there was still time to file a reference to oppose the notice to increase rent if she felt it was not fair.
13. According to the landlord, the application herein is an afterthought intended to waste court's time as the other tenant has already embraced the new rent from October 2022. The landlord attaches as annexure, a valuation report on rental assessment by Nishani Management valuers dated August 25, 2016.
14. The tenant filed a further affidavit sworn on November 22, 2022 in which she deposes that she was admitted in hospital for three (3) months due to severe health complications and was advised by her doctors that she should not use her phone to avoid stress which could worsen her condition.
15. The landlord is accused of taking advantage of the tenant's situation by serving the tenancy notice via whatsapp although fully aware of her condition instead of serving her employees at the premises.
16. The tenant reiterates that the premises are in a dilapidated condition as the roof was leaking and the drainage system had collapsed, the septic tank was exposed and the electric circuit was faulty resulting in destruction of her electronics.
17. On February 16, 2023, this Tribunal ordered its Rent Inspector to visit the suit premises to determine its state of repair and alleged dumping of construction materials. The report was filed after the visit which took place on March 3, 2023.



18. The report confirms that the sewage system was in a bad condition as it was overflowing at the back corridor. The Rent Inspector observed deposits of construction materials on the roof top of the building in one corner.
19. I am now required to determine the following issues in this case:-
- (a) Whether the tenancy notice dated July 4, 2022 has taken effect or not,
 - (b) Whether the tenant is entitled to the reliefs claimed in the complaint and application dated September 22, 2022.
 - (c) Who is liable to pay costs of the suit?
20. The tenant was served with a tenancy notice dated July 4, 2022 on July 6, 2022 via whatsapp no 0726111667 as per the affidavit of the process server which attaches a screenshot of the message evidencing service. In her supporting affidavit sworn on September 22, 2022, the tenant claimed to have been served with the tenancy notice by the landlord's caretaker one Samson Mwatu on September 15, 2022.
21. In her further affidavit sworn on November 22, 2022, the tenant states that she had been admitted to hospital for a period of three (3) months due to severe health complications and had been advised against using her phone to avoid stress which could worsen her condition. She attaches a discharge summary from Athi River Medical Services showing that she was admitted to hospital on July 2, 2022 and was discharged on August 10, 2022. This was a period of one (1) month and about one (1) week only contrary to her assertion of having been admitted for a period of three (3) months.
22. The tenant has not sought for extension of time to file a reference out of time in line with provisions of Section 6(2) of [cap 301](#), Laws of Kenya and instead have moved this Tribunal seeking for injunction against the rent increment.
23. Section 10 of [cap 301](#), Laws of Kenya provides as follows:
- “ 10. Where a landlord has served a notice in accordance with the requirements of Section 4 of this Act, on a tenant and the tenant fails within the appropriate time to notify the landlord of his unwillingness to comply with such notice or to refer the matter to a Tribunal, then subject to Section 6 of this Act, such notice shall have effect from the date therein specified to terminate the tenancy or terminate or alter the terms and conditions thereof or the rights or services enjoyed thereunder”.
24. The tenant having failed to file a reference for whatever reason, the tenancy notice came into effect on October 1, 2022 and the tenant's rent effectively increased from Kshs 12,000/- to Kshs 16,000/- per unit as expressed therein. It matters not that the premises need to be repaired which could only have been a good ground to oppose the tenancy notice through a reference. It cannot be good ground to obtain an order of injunction when the validity of the tenancy notice is not in question. A court of equity is not entitled to stop a legal process through an order of injunction. It amounts to abuse of court process and a misconception of the equitable remedy of injunction.
25. In the case of [Sabebe v Hassanally](#) (1981) eKLR at page 4-5, the court of appeal had the following to state:-
- “ In my opinion, it is clear that under Section 10, if a valid notice is not referred, the Landlord is entitled to possession without having to prove any of the statutory grounds relied upon



in the notice. To be valid a tenancy notice must comply with the provisions of Section 4, including the requirements of the use of the prescribed form of setting out the statutory grounds for relief and of due notice. The learned judge was wrong in this case to investigate the grounds relied upon in the notice, but even then, he should have given judgement for the appellant on the ground that was conceded namely that the landlord required the occupation of the premises for the purposes of his business (Section 7(1) (g)). The learned Judge was in error in not awarding possession of the premises to the appellant in accordance with Section 10, without making any inquiry into the validity of the grounds relied upon”.

26. Guided by the foregoing decision, I am not required to interrogate whether the tenancy notice was justified in the light of alleged non- maintenance of the suit premises as that is not an issue for this court in absence of a reference. I shall therefore direct that the tenant pays the new rent with effect from October 1, 2022 together with any accrued arrears.
27. Costs of any action before the Tribunal are within its discretion under Section 12(1) (k), [cap 301](#), Laws of Kenya but always follow the event unless for good reasons otherwise ordered. I have no reason to deny the landlord costs.
28. In conclusion, the following orders commend to me in this matter under Section 12(4) of [cap 301](#), Laws of Kenya:-
 - a. The tenant’s complaint and application dated September 22, 2022 are hereby dismissed with costs.
 - b. The tenancy notice dated July 4, 2022 took effect on July 1, 2022 under Section 10 of [cap 301](#), Laws of Kenya and the tenant ought to comply therewith.
 - c. The interim orders given on September 27, 2022 are hereby discharged/vacated.
 - d. The landlord’s costs are assessed at Kshs 15,000/- against the tenant.

It is so ordered.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 4TH DAY OF APRIL 2023.

HON. GAKUHI CHGE

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of:-

Tenant/Applicant present in person

No appearance for the Landlord.

