



**Granada Energy Limited v Maundu (Tribunal Case E002 of 2024)
[2024] KEBPRT 1219 (KLR) (27 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1219 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E002 OF 2024
A MUMA, MEMBER
AUGUST 27, 2024**

BETWEEN

GRANADA ENERGY LIMITED TENANT

AND

FELISTA KANINI MAUNDU LANDLADY

RULING

A. Parties And Representatives

1. The Applicant, Granada Energy Limited, has rented space for purposes of operating a petrol station business (“the Tenant”) erected on Plot No. 27 situated in Old Town Mavoko within Machakos (the “suit property”).
2. The firm of B.V. Francis & Associates Advocates represents the Tenant in this matter.
3. The Respondent, Felista Kanini Maundu, is the Landlady and owner of the suit property who rented out the suit property to the Tenant (the “Landlady”).
4. The firm of Onwong’a Nyakeriga & Co. Advocates represents the Landlady in this matter.

B. The Dispute Background

5. Vide a Reference dated 27th May 2024 and an Application evenly dated, the Tenant moved this Honourable Tribunal seeking to raise an objection to the Landlady’s Notice to Vacate dated 13th May 2024.
6. On 28th May 2024, the Tribunal in consideration of the Tenant’s Application, certified the matter as urgent and granted restraining orders against the Landlady from interfering with the Tenant’s quiet possession of the suit property pending hearing. The OCS Mavoko Police Station was ordered to ensure compliance.



7. Subsequently, the Tenant filed an Application for review on the orders dated 28th May 2024 on the grounds that the orders be addressed to the OCS Athi-river police station instead of OCS Mavoko police station as previously ordered. Consequently, on 5th June 2024, the Tribunal granted the orders sought by the Tenant thereby directing the OCS Athi River Police Station to ensure compliance.
8. Following this, the Landlady filed a Notice of Preliminary Objection dated 10th June 2024 on the grounds that the Tribunal lacks jurisdiction to hear and determine this suit.
9. During the hearing on 8th July 2024 in the presence of the Counsels for both parties, the Tribunal directed parties to file their submissions. On 25th July 2024, the Tenant confirmed to this Tribunal that parties have complied and filed their submissions. Therefore, it is in respect of the Tenant's Reference and Application dated 27th May 2024 that this matter comes for ruling.

C. Tenant's Claim

10. The Tenant avers that the Landlady's termination notice dated 13th May 2024 is defective as it purports to issue a 16 days' notice instead of a 30 days' notice in accordance to the Lease Agreement dated 1st August 2023 between the Tenant and the Landlady.
11. The Tenant also avers that it has always been remitting rent within reasonable period to the Landlady's bank account. As such, the Tenant denies owing any rent arrears. The Tenant avers that upon execution of the Agreement, the Tenant duly paid to the Landlady the sum of Kshs. 780,000/= as rent for a period of 6 months in which it has annexed bank payment receipt as evidence. Additionally, the Tenant avers in paragraph 6 of its Supporting Affidavit that it made further payment of Kshs. 800,000/= to the Landlady as rent for a further 6 months as allegedly agreed to which it adduced proof of bank receipt.
12. In response to the Landlady's Replying Affidavit dated 10th June 2024, the Tenant avers under paragraph 9 of its Further Affidavit that the allegations for a refund of Kshs. 250,000/= by the Landlady is not true. The Tenant depones that the said amounts paid by the Landlady was in partial satisfaction of a claim for Kshs. 300,000/= which loss was occasioned by the Landlady's son as a result of an offence of stealing by servant which was reported to the Police and an OB Number issued.
13. The Tenant contends that the Landlady is in contempt of the orders dated 28th May 2024. The Tenant avers that despite proper service of the Court Orders, the Landlady has occasioned damage of the Tenant's property as evidenced in the photographs attached therewith.
14. Further, the Tenant avers that the Landlady has occasioned loss of business and hindered business operations through the illegal actions of the Landlady to rent out the suit property to a third party during the existence a binding Agreement between the parties.

D. Landlady's Claim

15. In response, the Landlady alleges that despite the Tenant being in breach of the Agreement her pleas have gone unheard. Under paragraph 9 of the Respondent's Replying Affidavit, the Landlady disputes that she has neither held conversation with the Tenant nor made arrangements to accept any partial rent payment as alleged by the Tenant.
16. The Landlady alleges that it is the Tenant who initiated request for refund of the balance of rent and to find another tenant. To salvage the suit property from wasting away, the Landlady avers that she issued a notice to the Tenant to vacate.



17. The Landlady avers that upon the alleged refund of Kshs. 250,000/= to the Tenant on 30th May 2024, the Tenant handed possession to the Landlady and willingly vacated the suit property. As a result, the Landlady depones that the tenancy relationship does not exist.
18. The Landlady also avers that she has incurred damages of Kshs. 64,500/= as cost of repair as evidenced in the attachment to her replying affidavit.

E. Issues For Determination

19. Upon perusal, I find the following to be the main issues for determination:
 - i. Whether there exists any tenancy relationship between the Landlord and the Tenant;
 - ii. Whether the termination notice dated 13th May 2024 is enforceable; and
 - iii. Whether the Tenant is entitled to the reliefs sought.

F. Analysis And Findings

Whether there exists any tenancy relationship between the Landlord and the Tenant

20. The Landlord and Tenant (Sops, Hotels and Catering Establishments) Act, Cap 301 Laws of Kenya (“the Act”) confers power to this Honourable Tribunal to deal with the issue on jurisdiction which the Landlady has raised in her Preliminary Objection and also as part of her Grounds of Opposition. Section 12 of the Act states that:
 - (1) A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power—
 - (a) to determine whether or not any tenancy is a controlled tenancy;
21. Further, Section 2 of the Act, defines a controlled tenancy as;
tenancy of a shop, hotel or catering establishment-
 - b) Which has not been reduced into writing; or
 - c) 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;

23. In the instant case, it is not in dispute that parties entered into a Lease Agreement dated 1st August 2023 (“the Agreement”) to lease the suit property for a term of 1 year 11 months effective 1st August 2023 until 1st July 2025 at a monthly rent of Kshs. 130,000/=. Subsequently, the Tenant took vacant possession of the suit property upon payment of Kshs. 780,000/= to the Landlady as rent for the initial 6 months upfront which is in consonance with the agreed terms. The Landlady under paragraph 7 of



her Replying Affidavit has acknowledged receipt of the said amounts to which the Tenant has adduced a copy of the bank receipt in support of its claim.

24. Based on the existence of a duly executed written Agreement, I am satisfied that the tenancy relationship between the parties herein culminate to a controlled tenancy which this Tribunal has jurisdiction to hear and make orders. Therefore, I am convinced that the claims as raised by the Landlady in her Preliminary Objection as well as the Grounds of Opposition are without basis as the dispute herein relates to issues which arose during, or are akin to, a controlled tenancy.

Whether the termination notice dated 13th May 2024 is enforceable

25. Section 4 of the Act provides as follows:

“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 in the prescribed form”.

26. In the case of Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited, Civil Appeal No. 203 of 1994 it was stated as follows;

“The Act lays down clearly and in detail, the procedure for the termination of a controlled tenancy. Section 4(1) of the Act states in very clear language that a controlled tenancy shall not terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the tenant. The notice must also specify the ground upon which termination is sought.”

27. Having established that the tenancy in this case relates to a controlled tenancy, the Landlady is obliged to issue a valid termination notice to the Tenant in the prescribed form failure to which the notice shall not be enforceable.
28. In the circumstances, the Landlady issued the Tenant with a Notice to Vacate vide a letter dated 13th May 2024 which was to take effect on the 31st May 2024 upon which the Tenant was required to give vacant possession to the Landlady.
29. The Agreement under clause 10 requires the Landlady to issue a 30 days’ written notice to the Tenant on condition that there has to be a failure on the part of the Tenant to rectify the breach within 60 days upon receipt of a written notice from the Landlady. In the absence of a 60 days’ notice to the Tenant to rectify the breach and a further 30 days as agreed, the Landlady’s notice is not in the correct form as it is neither within the prescribed statutory period nor within the period as agreed in the Agreement.
30. Taking turn on the substantive issue, the Landlady seeks vacant possession of the suit property on the grounds of breach of clause 3(i) which the Tenant is obliged under the Agreement to make upfront payment of the initial 6 months’ rent being Kshs. 780,000/=. From the facts, the Landlady has not adduced any evidence to buttress her claim for non-payment. Conversely, the Tenant has adduced a copy of the bank receipt as proof of payment of the amounts under clause 3(i) to which the Landlady has admitted under paragraph 7 of her Replying Affidavit.



Whether the Tenant is entitled to the reliefs sought.

31. Section 12 of the Act authorizes this Honourable Tribunal to make various orders which, inter alia, include:
- (e) to make orders, upon such terms and conditions as it thinks fit, for the recovery of possession and for the payment of arrears of rent and mesne profits, which orders may be applicable to any person, whether or not he is a tenant, being at any material time in occupation of the premises comprised in a controlled tenancy;
 - (l) to award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill, and improvements carried out by the tenant with the landlord's consent"
32. Having determined that the Landlady's Notice to Vacate is invalid thus unlawful, the Tenant is entitled to compensation for loss incurred upon the unlawful termination of the controlled tenancy by the Landlady. Notably, the Tenant has merely quoted as costs the value of the signages destroyed. However, there is no proof either payment receipt or document to show the value of the property.
33. Further, the Tenant claims reimbursement of Kshs. 260,000/= as rent paid in upfront for the period in which the Tenant was not in occupation the suit property. It is noteworthy to consider upon lapse of the initial 6 months period on 31st January 2024, the Tenant paid in advance Kshs. 800,000/= to the Landlady's account and adduced a copy of the payment receipt. Accordingly, the Landlady is only entitled to the rent from 1st February 2024 until 30th May 2024 in which the Tenant was in occupation of the suit property being Kshs. 520,000/= and the balance of Kshs. 280,000/= be refunded since the Tenant is no longer in occupation of the suit property.
34. On the issue of repairs, the Landlady has adduced an invoice in the sum of Kshs. 64,500/= as proof of the damages incurred during the subsistence of the tenancy. Notably, the Tenant has neither denied nor disputed any of the amounts in the Landlady's invoice. Further, on the issue of contempt, the Tribunal takes note that the Tenant has vacated the suit property and is no longer in occupation thus the Tribunal cannot purport to act in vain since the orders are overtaken by events.

G. Orders

35. In the upshot, the Tenant's Reference and Application dated 27th May 2024 is hereby allowed in the following terms:
- i. Landlady to offset the amounts as costs for repair as Kshs. 64,500/= from the balance of Kshs. 280,000.00;
 - ii. Landlady to refund to the Tenant within 30 days from the date hereof rent balance of Kshs. 215,500.00; and
 - iii. Each party shall bear its own costs.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL



RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 27TH DAY OF AUGUST 2024 IN PRESENCE OF NYAKENGA FOR THE LANDLADY AND OGOLLA FOR THE TENANT.

