



**Ngugi v Munguchi (Tribunal Case E644 of 2022)
[2023] KEBPRT 1225 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1225 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E644 OF 2022
CN MUGAMBI, CHAIR
JANUARY 31, 2023**

BETWEEN

EVANSON WAINAINA NGUGI TENANT

AND

PETER NDIRANGU MUNGUCHI LANDLORD

RULING

Introduction

1. The landlord's notice to terminate tenancy is the one dated 17.05.2022 and seeks to terminate the tenant's tenancy with effect from 1.08.2022. the reasons given for the termination are that:-

“The landlord wants to use the business premises the tenant occupies for the landlord's (own) personal use for not less than one year.”
2. The tenant did not agree with the notice to terminate his tenancy and filed a reference to the Tribunal dated 15.7.2022.
3. Thereafter, this matter proceeded for hearing orally and both parties gave their evidence with the landlord calling one witness in support of his case while the tenant testified on his own behalf and called no witnesses.

The Landlord's case

4. The landlord testified that he did not agree with the tenant that the tenant would renovate the premises and further that, he did not give his consent for the renovation of the premises. It was the landlord's evidence that the photographs shown to him for the alleged renovations on the premises were false.
5. The landlord sought to rely on his affidavits and other documents filed in this case in support of his case.



6. There are three affidavits filed by the landlord in this matter. The same are dated/sworn on 5.08.2022, 12.09.2022 and 9.12.2022. the contents of the said affidavits may be summarized as follows hereunder:-
 - a. That the landlord purchased the suit property in the year 2019 and he was therefore a stranger to the tenant who came into the premises in the year 2013.
 - b. That the tenant should not expect any compensation for any renovations from the landlord as there is no binding agreement between the parties.
 - c. That the tenant had illegally sublet the suit premises without the consent of the landlord or the landlord's agent.
 - d. That it is the right of the landlord to terminate the tenancy or repossess the premises by issuing a legal termination notice.
 - e. That it is true that the landlord wants to use the premises for his own personal use.
 - f. That the tenant has defaulted in paying rent and had accrued rent arrears of Kshs. 15,600/= up to August 2022.
 - g. That the purported renovations at a cost of Kshs. 750,000/= is supported by fake receipts with no ETR.
 - h. That the lease agreement presented to court as annexure EW2 in the tenant's application is fake as the landlord has never entered into any lease agreement with the tenant herein.
 - i. That the landlord is servicing a loan and he would like to put a business which his family will operate to enable him pay the loan he is currently servicing.
7. The landlord's witness Mr. Hussein Mogere testified that; he is the landlord's agent and he is the one who instructed the process server to serve the landlord's notice to terminate tenancy dated 17.5.2022.
8. The said witness also testified that he collects rent on behalf of the landlord over the suit premises and the tenant has not paid rent since he was served with the notice to terminate tenancy. The rent arrears now stand at Kshs. 38,100/=.
9. The witness further testified that the landlord purchased the suit premises while the tenant was already there.
10. Under cross examination by Counsel for the tenant, the witness conceded that he was engaged as an agent by the landlord in the year 2021 and he did not witness any renovations in the suit premises by the tenant.
11. The witness further clarified that the dispute before court was not one of the payment of rent but of the landlord taking over the suit premises.

The Tenant's case

12. The tenant testified that, he has been a tenant in the suit premises since the year 2013, starting off with a monthly rent of Kshs. 5,000/= but now paying rent of Kshs. 22,500/= after taking up additional space.
13. The tenant further stated that if the landlord wants to take over the premises, then he ought to pay the tenant Kshs. 600,000/= that he has spent in renovating the premises or be given a further lease of at least three (3) years to cover the said expenses.



14. It was the tenant's case that there are other tenants in the premises and he is not aware if they have been issued with notices to vacate.
15. The tenant's affidavit sworn on 15.7.2022 and forming part of the court records may be summarized as follows hereunder:
 - a. That in 2013, he entered into an oral agreement with the tenant for the lease of the suit premises.
 - b. That the tenant incurred Kshs. 750,000/= in renovating the premises being Kshs. 600,000/= on materials and Kshs. 150,000/= on labour costs.
 - c. That in 2021, the tenant's manager sublet part of the premises to one Patrick Ouma Olinda to sell beds.
 - d. That the tenant is opposed to moving out of the suit premises.
 - e. That the tenant is sure that the landlord does not wish to take up the space for his own use but rather it is the caretaker who wishes to lease the suit premises to the sub tenant.
 - f. That the business premises comprises many other businesses, raising the question why the landlord is only targeting the tenant herein whose premises are now beautiful after the renovations and whose customer turnover is high.
16. On cross examination by the landlord, the tenant confirmed that there was no agreement between the parties that the tenant would renovate the premises. The tenant further stated that the agreement was between himself, the caretaker and Public Health officers.
17. The tenant further stated under cross examination that whereas it is true that he had been served with the notice to terminate his tenancy, the said notice did not have any grounds for termination, but on second thoughts, the tenant stated that the notice indicated that the landlord wanted to use the suit premises.
18. In concluding his cross examination, the tenant stated that he was ready to leave if he was compensated.

Analysis and determination

The issues that arise for determination in this reference are, in, my view the following:-

- a. Whether the tenant is entitled to compensation for the alleged renovations in the suit premises.
- b. Whether the landlord has proved the grounds for the termination of tenancy set out in his notice to terminate tenancy dated 17.5.2022.
- c. What orders ought to be made in this reference.

Issue A

19. It is clear from the testimony of the parties that the landlord purchased the suit premises while the tenant was already in the premises. My understanding then would be that the landlord purchased the whole of the premises as he found it. If there was any interest of the tenant at the time of the purchase, then no evidence of the same has been tendered by the tenant. The landlord's position has been that he did not give any consent to the tenant to renovate the premises and the tenant indeed confirmed during cross examination that he obtained no such consent from the landlord. His evidence was that



he obtained the consent from the caretaker. In this issue, I am prepared to find and I do find that the tenant did not have the consent of the landlord to renovate the premises and he can therefore not claim for any compensation from the landlord for the alleged repairs.

In this regard, Section 12(1) of [Cap 301](#) provides as follows, that the Tribunal has powers;

“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.”

The tenant, having not obtained the landlord’s consent to carry out the alleged improvements, he cannot be the beneficiary of the above Section of the law on whose authority compensation is payable.

20. Even if I was wrong on the above finding, I would still not allow the tenant’s claim for want of particularity. The affidavit in support of the tenant’s case and application does not particularize the renovations carried out. It is not enough to just annex receipts of building materials to the affidavit without stating the works done. The receipts by themselves without prove, do not establish any connection to the suit premises or to the renovations allegedly carried out therein.

On Issue B

21. The landlord’s notice to terminate tenancy is brought under the provisions of Section 7(1)(G) of [Cap 301](#) which provides as follows:-

“subject as in hereinafter provided, that on the termination of the tenancy, the landlord himself intends to occupy for a period of not less than one year the premises comprised in the tenancy for purposes or partly for the purposes, of a business to be carried out by him therein or at his residence.”

22. In his supplementary affidavit, the landlord on supporting the notice to terminate has stated as follows:-

“that I have secured a loan which I have been servicing every month. Further it has become difficult to service the said loan therefore I want to put up a business which my family will operate to enable me offset the loan that I am currently servicing.”

Section 7(g) of [Cap 301](#) only relates to the intention of the landlord to occupy the suit premises for the purposes of carrying out a business therein. The landlord has expressed his intention to so occupy the suit premises. The reason he intends to start his own business in the premises is to enable him pay off his loan. I have looked at the bank statement produced by the landlord and I am satisfied that the landlord is wellto sustain his intended business from the funds in the said account.

23. The tenant’s view is that the landlord is being discriminatory as there are other tenants in the premises and to whom no notice to terminate tenancy have been issued. I do not think it is for the tenant to determine upon whom the termination notice should be issued. All that the law requires of the landlord is the issuance of the statutory notice under Section 421 of the Act and which the landlord has done. The tenant has not challenged the validity of the notice as far as its statutory format is concerned. I do not therefore think this objection holds any merits.
24. On this issue, I am satisfied that the landlord has demonstrated the reasons why he intends to take over the suit premises. This is so because I think the stringent requirements of proof under Section 7(f) are different from Section 7(g). Under the former, the landlord may be required to prove the existence of



building plans and consents to construct from various Government agencies. My view is that whereas a landlord intends to occupy the premises for the purposes of carrying out his own business, proof of the availability of funds to run a business ought to be sufficient and especially where the landlord has complied with the legal requirements as to notice. I therefore uphold the notice to terminate tenancy in this matter.

On Issue C

25. I have considered the fact that the tenant has been in occupation of the suit premises for a considerable length of time and has established a solid business in the suit premises. I am also alive to the fact that the suit premises belong to the landlord and that he now wants to put the same to his own use. The law allows for the termination of tenancies for the reasons specified under Section 7 of the Act [Cap \(301\)](#) and more particularly in this case, Section 7(G). In these circumstances, having found the notice to terminate to have been proved, the most I can do is to allow the tenant sometime to remove his business from the suit premises. Section 9(1) of [Cap 301](#) provides as follows:-

“Upon a reference, a tribunal may after such enquiry as may be required by or under this Act, or as it deems necessary,

- a. Approve the terms of the tenancy noticeeither in its entirety or subject to such amendment or alteration as the Tribunal thinks just having regard to all the circumstances of the case or,
- b. order that the tenancy notice shall be of no effect.
- c. and in either case, make such further or other orders as it thinks appropriate.

26. Pursuant to the provisions of Section 9(1) (a) and (c) above, I will now make the following orders: -

- a. That the tenancy between the parties herein is ordered terminated.
- b. That the tenant will vacate the suit premises within the next three (3) months from the date of this ruling.
- c. That after the expiry of three (3) months, (February, March, April 2023) the tenant failing to so vacate, the landlord will be at liberty to forcefully evict the tenant using a licensed Auctioneer.
- d. The landlord will have the costs of this reference assessed at Kshs. 25,000/=.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31ST DAY OF JANUARY 2023.

HON. CYPRIAN MUGAMBI - CHAIRPERSON

31. 01.2023

In the presence of;

Mrs. Ngetho for the Tenant

In the absence of the landlord

