



**Wambugu t/a Summary Communication v Mbugua t/a Freeline General Agencies
(Tribunal Case 169 of 2021) [2024] KEBPRT 1263 (KLR) (15 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1263 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 169 OF 2021
CN MUGAMBI, CHAIR
AUGUST 15, 2024**

BETWEEN

**SAMUEL GACHURU WAMBUGU T/A SUMMARY
COMMUNICATION TENANT**

AND

**GEORGE NDICU MBUGUA T/A FREELINE GENERAL
AGENCIES LANDLORD**

RULING

Introduction

1. The Tenant's notice of motion dated 31.5.2024 seeks an order of injunction restraining the Landlord/ Respondent from in any manner interfering with the Tenant's quiet and peaceful occupation and/or tenancy at the Landlord's premises known as Venus Plaza Plot No. 209/15382, South C, Shop No. 7 pending the hearing of this Application.

The Tenant's depositions

2. The Tenant's affidavit in support of his Application may be summarized as follows:-
 - a. That since the year 2021, the Tenant has peacefully operated his wines and spirits business and has been paying his rent promptly.
 - b. That on 1.1.2024, the Tenant's lease expired and his tenancy reverted to a month to month tenancy and the Tenant has been paying rent since January 2024 to date, which rent the Landlord has at all material times accepted.
 - c. That on 21.5.2024, the Landlord issued the Tenant with a notice to vacate and give vacant possession of the premises before 1.8.2024. The Tenant is of the view that the said notice does



not conform with the provisions of Section 4(2) of Cap 301 and therefore ought to be struck out.

- d. That the Tenant believes that the Landlord is being used by one Mary Nduta in the issuance of the said notice.
- e. That the Tenant is apprehensive that the Landlord may evict him at any time exposing the Tenant to irreparable harm and damage.

The Landlord's depositions

- 3. The replying affidavit sworn by the Landlord/Respondent on 12.6.2024 may be summarized as follows:-
 - a. That the Respondent is the owner of the suit premises comprising of residential and business units.
 - b. That the Tenant's lease agreement for Shop No. 7 in the suit premises expired on 1.3.2024 and the Tenant has not applied for an extension of the said lease.
 - c. That the Tenant has admitted receiving the notice to terminate tenancy dated 21.5.2024 which was served upon the Tenant on 22.5.2024.
 - d. That the reasons for the termination of the lease is that it had naturally expired and the Landlord now requires to use the premises for his personal business and as his office.
 - e. That the Tenant has always known that his tenancy was for a period of five years and three months and therefore his prayer for an injunction are frivolous as the court cannot re-write an agreement for the parties and this prayer is therefore intended to re-open unnecessary litigation.
 - f. That the notice served upon the Tenant is legally sound.
 - g. That the lease agreement dated 1.1.2024 is self-regulatory and the Tenant ought to allow the Landlord access to the premises for purposes of inspecting the same.

The Tenant's Further depositions

- 4. The Tenant has deposed in his further affidavit that the lease agreement executed between the parties was for a period of five years and not five years three months, the handwritten endorsement of three months has not been counter signed by the parties.
- 5. The Tenant has further deposed that the lease agreement does not require him to give notice of extension of the lease.
- 6. It is also deposed by the Tenant that the notice issued by the Landlord is fatally defective and the same is incurable.

Analysis and determination

- 7. The only issue that arises for determination in this Application is whether the Tenant is entitled to the orders sought in his Application.
- 8. It is a ground commonly held between the parties that the lease agreement between the parties expired, although the parties do not seem to agree whether it expired in January 2024 or March 2024. It's also common ground that the Landlord has continued to accept rent from the Tenant after the lease expired. In these circumstances, the tenancy between the parties became a month to month tenancy.



Section 60(2) of the Land Act No. 6 of 2012 provides as follows;-

“A lessor who accepts rent in respect of any period after the lease has been terminated or the term of the lease has expired, shall not by reason of that fact be deemed to have consented to the lessee remaining in possession of the land, or as having given up on any of the rights or remedies of the lessor against the lessee for breach of a covenant or condition of the lease, and if the lessor continues to accept rent from a tenant who remains in possession for two months after the termination of the lease, a periodic lease from month to month shall be deemed to have come into force.”

9. A periodic lease from month to month is a controlled tenancy within the meaning ascribed to a controlled tenancy under the provisions of Section 2(1)(a) of Cap 301, and therefore subject to the provisions of the said Act. This being the case, if the Landlord was desirous of terminating the lease, and which he seems to have been, then he was required under the provisions of Section 4(2) of Cap 301 to give the Tenant a notice in the form prescribed under that Section.
10. I have seen the Landlord's notice to terminate lease dated 21.5.2024. it is not in the mandatory form prescribed under Section 4(2) which is FORM A in the Schedule in the Act. The notice does not conform to the provisions of Section 4(4) and 4(5) of the Act and it is therefore a defective notice, invalid and of no effect.
11. I have perused the record herein and I do note that on 10.9.2021, the Tribunal allowed the Tenant's Application dated 22.2.2021 in terms of prayer 4 thereof which effectively restrained the Landlord from in any manner interfering with the Tenant's quiet and peaceful enjoyment of the tenancy pending the hearing and determination of the Complaint. I do note that the Complaint has not been heard as the parties have not taken any steps to have the matter finally determined.
12. I have already found the Landlord's notice to be illegal and of no effect. Consequently, I do find merits in the Tenant's Application and proceed to allow the same as prayed.
13. I will further order that the Complaint by the Tenant be fixed for hearing as earlier directed by the court.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15TH DAY OF AUGUST, 2024.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Khamati for the Tenant and Mr. Wanjohi for the landlord

