



**Lifeline Group of Hospitals v Kahengeri & another; Mugendi (Interested Party)
(Tribunal Case E518 of 2021) [2023] KEBPRT 285 (KLR) (14 April 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 285 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E518 OF 2021
A MUMA, VICE CHAIR
APRIL 14, 2023**

BETWEEN

LIFELINE GROUP OF HOSPITALS TENANT

AND

GITU KAHENGERI 1ST RESPONDENT

NYALUNGA TRADERS 2ND RESPONDENT

AND

BENSON MUGENDI INTERESTED PARTY

JUDGMENT

A. Parties and Representatives

1. The applicant Lifeline Group of Hospitals is the tenant and rented space on the suit property on LR No 12942/1 being shops no. 4,7,8,9 & 10 (hereinafter known as the 'tenant')
2. The firm of Wotanya & Co Advocates represent the applicant/tenant in this matter.
3. The respondent is the landlord and the owner of the suit property and rented out space to the tenant. (hereinafter known as the 'landlord')
4. The Landlord/Respondent appears in person in this matter.

B. The Dispute Background

5. The Landlord issued the tenant with a notice to terminate tenancy dated September 9, 2021 which was to take effect on December 1, 2021. The notice was issued on the grounds that the tenant made irregular payments of Rent.



6. In opposition to the notice, the Tenant has filed a Reference dated September 23, 2021 under section 12 (4) of the Landlords and Tenants (Shops, Hotels and Catering) Establishments Act Cap 301 and a Notice of Motion Application filed under Certificate of Urgency dated September 21, 2021.
7. The matter came up for hearing before the Tribunal on September 23, 2021 where the Tribunal gave orders restraining the landlord from interfering with the tenant's quiet possession and from levying distress.

C. The Tenant's Claim

8. The Tenant/Applicant filed a Reference dated September 23, 2021 and an application dated September 21, 2021.

D. The Landlord's Claim

9. The Landlord/Respondent has filed a replying affidavit dated February 16, 2023 in opposition to the tenant's application.

E. List of Issues for Determination

10. The issues raised for determination are as follows;
 - a. Whether the Notice issued by the Landlord was valid?

F. Analysis and Findings

Whether the Notice issued by the Landlord was valid?

11. The tenant approached this tribunal by way of the reference dated September 23, 2021. The same was filed in opposition to the notice issued by the landlord dated September 9, 2021.
12. The Landlord wanted to terminate the tenancy on the grounds that the tenant made irregular payments of rent.
13. Section 4 (1) & (2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* which states as follows:
 - (1) 'Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall 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 the following provisions of this Act.
 - (2) 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 to the tenant in the prescribed form.'
14. In the present case, the tenant was accorded three months by the landlord as per the notice within which to vacate. Based on the above cited provisions the said notice is valid under the law.
15. I take note of the reason given by the landlord for wanting to terminate the tenancy as being irregular payment of rent. It is my observation that this is indeed warranted. During the subsistence of this



suit, the Court has on several occasions required that the tenant pay rent and any arrears owed to the landlord.

16. This liberty accorded by the Tribunal has gone abused. The tenant has frustrated the landlord who is by all means a very senior citizen and has made efforts to obey tribunal orders never taking the law into his hands at any time as landlords commonly do and never interfering with the tenants quiet possession, in addition he has attended all Tribunal hearings in spite of his advanced age without fail and travels all the way to the at the tribunal offices where he is logged in using our registry laptop.
17. In spite of all this effort the Tenant has continued to default on rent always claiming that it would be inhuman to remove patients from the wards of the hospital a reason which made the tribunal exercise a bit of patience but mbio za sakafuni huishia ukingoni.
18. The landlord has supplied clear Statements of Accounts outlining how much is owed and what is paid every time an order is made almost on the eve of the hearing indeed the tenant has been in default since the commencement of the suit and has been given several chances to make good their claim to clear their arrears to no avail, I am persuaded to agree with the landlord that the tenant is a perpetual defaulter and only an distress order and eviction will serve justice to the Landlord.
19. In light of the foregoing, and based on the validity of the notice issued by the landlord, I therefore proceed to order as follows;

G. Orders

- a. The upshot is that the Tenant's Reference and Application dated September 23, 2021 are hereby dismissed in the following terms;
- b. The tenant shall pay the arrears owed to the landlord being Kshs 1,067,790.00 before Close of Business April 30, 2023 failure to which the landlord shall be at liberty to break in and take back vacant possession of the premises.
- c. OCS Ruiru Police Station to assist in compliance.
- d. The Landlord shall have costs assessed at Kshs 50,000.00

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Judgment dated, signed and delivered virtually by **Hon A. Muma this 14th day of April 2023** in the absence of the landlord **Gitu** and presence of **James** grandson to the Landlord and **Rioba** for the Tenant.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

