



**Kinuthia v Landmerk International Properties Limited & 2 others (Tribunal  
Case E1140 of 2023) [2024] KEBPRT 673 (KLR) (24 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 673 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E1140 OF 2023  
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER  
MAY 24, 2024**

**BETWEEN**

**MOSES KAMUTI KINUTHIA ..... APPLICANT**

**AND**

**LANDMERK INTERNATIONAL PROPERTIES LIMITED .... 1<sup>ST</sup> RESPONDENT**

**ANTONY MUNENE ..... 2<sup>ND</sup> RESPONDENT**

**ANNE WANGARI MUNENE ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**A. Background**

1. Before us is an application dated 17<sup>th</sup> November, 2023 and a Notice of Preliminary Objection dated 19<sup>th</sup> December, 2023.
2. The application dated 17<sup>th</sup> November, 2023 was instituted by the applicant/tenant vide a reference under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301, dated 17<sup>th</sup> November, 2023 with a Complaint that the landlord issued an illegal notice to vacate the suit premises.
3. The tenant/applicant filed a Notice of Motion under a Certificate of Urgency of even date in which he sought orders restraining the respondents herein from evicting or interfering with the tenant at the suit premises and that the respondents give unlimited access to the tenant and his customers pending the hearing and determination of the application.
4. The application is supported by an affidavit dated 17<sup>th</sup> November, 2023 in which the applicant/tenant deposes as follows; -



- i. That on 1<sup>st</sup> January, 2023, the applicant entered into a tenancy agreement with the landlord for a period of 3 years over a car wash erected on plot No. RUIRU TOWNSHIP/260. A copy of the tenancy agreement is annexed as “MKK-1”.
  - ii. That the applicant has been paying rent at a monthly rate of KES. 150,000 diligently and has never been issued with any receipt by the landlord.
  - iii. That the respondents have been harassing the applicant and as a result, paralyzed business operations.
  - iv. That the constant harassment by the respondents is a scheme to evict the tenant/applicant from the suit premises in order to let the premises to a 3<sup>rd</sup> party.
  - v. That on 8<sup>th</sup> November, 2023, the landlord served the applicant with a notice to vacate the premises by 1<sup>st</sup> December, 2023. A copy of the Notice to Vacate dated 8<sup>th</sup> November, 2023 is annexed as “MKK-2”.
  - vi. That the tenant/applicant has injected capital in the sum of KES. 3,000,000 to put up the car wash business.
  - vii. That the landlord acknowledges receipt of rent for the months of October and November 2023 in the said notice to vacate.
5. The Tribunal issued interim orders restraining the respondents from interfering with the peaceful occupation of the applicant/tenant at the suit premises pending hearing inter-partes.
  6. The Notice of Preliminary Objection dated 19<sup>th</sup> December, 2023 was then filed by the 3<sup>rd</sup> respondent based on grounds that the Tribunal has no jurisdiction to hear and determine the matter as there is no existing landlord/tenant relationship between the applicant and the 3<sup>rd</sup> respondent who is the registered owner of the demised premises.
  7. The 3<sup>rd</sup> respondent also filed a replying affidavit dated 19<sup>th</sup> December, 2023 in response to the tenant’s application, in which she deposes as follows; -
    - i. That the 3<sup>rd</sup> respondent is the registered proprietor of the suit property known as Ruiru Township/260 and is in possession of the original title document.
    - ii. That despite transferring the demised premises to the 3<sup>rd</sup> respondent, the 1<sup>st</sup> respondent has continued to interfere with the 3<sup>rd</sup> respondent’s propriety rights to the extent of purporting to let the suit premises to the applicant.
    - iii. That previously, the 1<sup>st</sup> respondent filed a suit at the Thika Environment & Land Court, being ELC No. 087 of 2021 (Landmark International Properties Limited vs Anne Munene Wangari), where the 1<sup>st</sup> respondent’s application seeking to restrain the 3<sup>rd</sup> respondent from the demised premises was dismissed for lack of merit by Hon. Justice Eboso in his ruling delivered on 28<sup>th</sup> September, 2022.
    - iv. That it was after the dismissal of the said application that the 1<sup>st</sup> respondent through its agents broke into the suit premises and purported to enter into a tenancy agreement with the applicant herein.
    - v. That the purported tenancy, backdated to January 2023, and the reference filed herein is orchestrated by the 1<sup>st</sup> respondent with the sole intention of illegally defeating the 3<sup>rd</sup> respondent’s propriety rights in the demised premises.



- vi. That being the registered proprietor of the demised premises, the 3<sup>rd</sup> respondent has never authorized the 1<sup>st</sup> respondent to let the premises to the applicant or any 3<sup>rd</sup> party.
  - vii. That the applicant is a stranger to the 3<sup>rd</sup> respondent and that there is no landlord/tenant relationship between the two parties.
  - viii. That following the illegal acts of the applicant and the 1<sup>st</sup> respondent, the 3<sup>rd</sup> respondent has not been able to utilize the suit property and is entitled to mesne profits. A copy of the certificate of official search, certificate of lease and certified ruling are all annexed as “AWM-A”.
8. The court directed that both the Notice of preliminary objection together with the application be disposed of by way of written submissions. Only the 3<sup>rd</sup> respondent complied by filing his written submissions dated 25<sup>th</sup> March, 2024 which we have considered while dealing with the issues for determination.

## **B. Issues for Determination**

9. The following are the issues for determination; -
- a. Whether the Notice of Preliminary Objection dated 19<sup>th</sup> December, 2023 ought to be allowed or dismissed.
  - b. Whether the tenant is entitled to the orders sought in the application dated 17<sup>th</sup> November, 2023.
  - c. Who shall bear the costs of the application?

### **Issue (a) Whether the Notice of Preliminary Objection dated 19<sup>th</sup> December, 2023 ought to be allowed or dismissed.**

- 10. The 3<sup>rd</sup> respondent herein filed a notice of preliminary objection dated 19<sup>th</sup> December, 2023 challenging the Tribunal’s jurisdiction to determine this matter as there is no landlord/tenant relationship between the applicant and the 3<sup>rd</sup> respondent.
- 11. The 3<sup>rd</sup> respondent in her replying affidavit dated 19<sup>th</sup> December, 2023 has sworn that she is the registered proprietor of the suit premises herein and has presented evidence to prove ownership of the said premises.
- 12. The 3<sup>rd</sup> respondent in her written submissions avers that the applicant herein has sued the 1<sup>st</sup> and 2<sup>nd</sup> respondents as the landlord and agent respectively, but has not stated in what capacity he has sued the 3<sup>rd</sup> respondent.
- 13. Upon perusal of the filed documents, we confirm that indeed the applicant has not provided evidence or demonstrated any privity of contract with the 3<sup>rd</sup> respondent.
- 14. The 3<sup>rd</sup> respondent herein contends in her submissions that she is not a beneficiary of any rent payable by the applicant and deposes in her replying affidavit that she has never entered into any tenancy agreement with the applicant herein.
- 15. The Tribunal’s jurisdiction is conferred by the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap. 301, Laws of Kenya in respect of controlled tenancies.



16. Section 2(1) of Cap 301 laws of Kenya defines a controlled tenancy as follows; -

“controlled tenancy” means a tenancy of a shop, hotel or catering establishment—

- (a) which has not been reduced into writing; or
- (b) 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:”

17. Section 2 of the Act has also defined a landlord as follows: -

“in relation to a tenancy, means the person for the time being entitled, as between himself and the tenant, to the rents and profits of the premises payable under the terms of the tenancy.”

18. In view of the foregoing provision of the applicable law, we are satisfied that there is no evidence of existence of any landlord/tenant relationship between the applicant and the 3<sup>rd</sup> respondent.

19. That being the case, we find that the Tribunal has no jurisdiction to entertain this matter against the 3<sup>rd</sup> respondent and the notice of preliminary objection dated 19<sup>th</sup> December, 2023 is hereby allowed.

**Issue (b) Whether the tenant is entitled to the orders sought in the application dated 17<sup>th</sup> November, 2023.**

20. The tenant/applicant approached this Tribunal seeking for orders to restrain the landlord from evicting or interfering with the tenant’s peaceful occupation of the suit premises.

21. 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 held as follows: -

“The Act lays down clearly 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. The prescribed notice in form A also requires the landlord to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice.”

22. In the instant case, the Landlord/1<sup>st</sup> Respondent issued the tenant with notice to vacate the suit premises dated 8<sup>th</sup> November, 2023 which upon perusal is not in the form prescribed form under Cap 301, Laws of Kenya.

23. We therefore find that the respondent’s insistence on the tenant vacating the suit premises contravenes section 4(2) of Cap. 301, Laws of Kenya and it is in this regard that we find that the Notice to Vacate the suit premises is null and void ab initio.



24. We also note that there is no response to the application from the 1<sup>st</sup> and 2<sup>nd</sup> respondents, therefore, we have no option but to allow the application dated 17<sup>th</sup> November, 2023.

**Issue (c) Who shall bear the costs of the application?**

25. Under Section 12(1)(k) of Cap. 301, Laws of Kenya, costs of any suit before this tribunal are in its discretion but always follow the event unless for good reasons otherwise ordered. We shall order costs of the application from the 1<sup>st</sup> and 2<sup>nd</sup> respondents to the applicant/tenant and costs of the notice of preliminary objection to the 3<sup>rd</sup> respondent.

**C. Orders**

26. In conclusion, the following orders commend to us-
- a. The Notice of Preliminary objection by the 3<sup>rd</sup> respondent dated 19<sup>th</sup> December, 2023 is hereby upheld with costs of KES. 20,000 to the 3<sup>rd</sup> respondent.
  - b. The notice to vacate dated 8<sup>th</sup> November, 2023 is declared null and void for all purposes.
  - c. The application dated 17<sup>th</sup> November, 2023 is hereby allowed as prayed with costs.
  - d. Costs of the application in the sum of KES. 25,000 are awarded to the tenant/applicant against the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24<sup>th</sup> DAY of MAY 2024.**

**HON. JOYCE AKINYI OSODO.....(PANEL CHAIRPERSON)**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON GAKUHI CHEGE.....(PANEL MEMBER)**

In the presence of:

Parties absent.

