



**Kibicho t/a Chania Café v Mukuhi & another (Tribunal Case
E012 of 2023) [2023] KEBPRT 1383 (KLR) (8 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1383 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E012 OF 2023
CN MUGAMBI, CHAIR
SEPTEMBER 8, 2023**

BETWEEN

JAMES KIBICHO T/A CHANIA CAFÉ TENANT

AND

FLOMENA MUKUHI 1ST RESPONDENT

ESTHER KAMAU 2ND RESPONDENT

RULING

Introduction

1. The Tenant's/Applicant's notice of motion dated 20.1.2023 seeks orders that the Tenant be granted leave to file his Reference out of time and that pending the hearing and determination of the intended Reference, the Respondents be restrained from in any manner whatsoever interfering with the Applicant's tenancy for 454N/M/Afraha in Nyahururu town (hereinafter, "the suit property").

The Applicant's depositions

2. The affidavit of James Ndaruga Kibiho sworn on 28th January, 2024, may be summarized as follows hereunder:-
 - a. That he has been a Tenant in the suit premises since 1999 and currently pays a monthly rent of Kshs. 18,000/=.
 - b. That in December 2022, the Tenant had accumulated rent arrears of Kshs. 38,220/= but which he cleared on 17.12.2022.
 - c. That the Tenant operates a hotel in the suit premises.



- d. That by a notice to terminate tenancy dated 11th October, 2022, the Respondents notified the tenant of their intention to terminate the tenancy on account of non-payment of rent and the intended use of the suit premises by the Respondents family.
 - e. That the Tenant has no rent arrears and he highly doubts that the Respondents have any intentions of occupying the demised premises.
 - f. That the Tenant intends to file a Reference in objection to the notice.
 - g. That if the notice of termination is allowed to be effected, the Tenant is likely to suffer irreparable loss and damages.
 - h. That in the interests of justice, the Application ought to be allowed so that the Tenant is granted an opportunity to be heard.
3. That the Tenant in his further affidavit depones that he is not a rent defaulter nor is he a difficult Tenant and it is only during the covid pandemic that he defaulted in the payment of rent.

The Respondents depositions

4. The Respondents replying affidavit sworn by Flomena Mukuhi may be summarized as follows hereunder;-
- a. That the Tenant currently pays the rent of Kshs. 18,200/= per month for the suit premises.
 - b. That the Tenant has on several occasions defaulted in paying rent prompting the Respondents to issue the Tenant with the notice to terminate tenancy dated 11.10.2022.
 - c. That as at April, 2023, the Tenant was in rent arrears amounting to Kshs. 32,950/= and it is therefore not true that the Tenant does not have any rent arrears as he alleges.
 - d. That the Tenant failed to comply with the provisions of Section 6(1) of [Cap 301](#).
 - e. That due process was followed in the termination of the tenancy between the parties.
 - f. That the Respondents intend to use the suit premises upon termination of the tenancy for their personal use.

Analysis and determination

5. The only issue that arises in this Application is whether the Applicant should be granted an extension of time within which to file his Reference in objection to the Respondents notice to terminate tenancy dated 11.10.2022.
6. It is common ground that the Tenant/Applicant was indeed served with the notice to terminate his tenancy. It is further common ground that the Tenant did not file a Reference to the Tribunal in objection to the notice to terminate tenancy under the provisions of Section 6(1) of [Cap 301](#). Ordinarily, in these circumstances, the notice to terminate tenancy would have been effective on the effective date shown therein but this ordinary progression has been interrupted by the Tenant's application for extension of time within which to file his Reference to the Tribunal.
7. The Tenant's affidavit does not state why the Tenant who admits receiving the notice to terminate tenancy did not file his Reference to the Tribunal as required under Section 6(1) of [Cap 301](#). I have however noticed in the grounds relied upon by the Applicant, that the Tenant alleges that the reason he did not file Reference was that the Respondents had promised verbally to withdraw the notice



to terminate upon the Tenant paying the rent. The Tenant now intends to object to the said notice because the Respondents have refused to withdraw the same.

8. The Tenant in his affidavit has implored the Tribunal to allow his Application in order to meet the ends of justice.
9. The landlord objects to the Application majorly on the grounds that the Tenant is in rent arrears.
10. Section 6(1) of Cap 301 provides as follows;-

“A party who wishes to operate a tenancy notice and who has notified the requesting party under section 4(5) of this Act that he does not agree to comply with the tenancy notice, may before the date upon which such notice is to take effect refer the matter to a Tribunal whereupon such notice shall be of no effect until and subject to the determination of the Reference by the Tribunal.

Provided that the Tribunal may for sufficient reasons and on such conditions as it thinks fit, permit such a reference notwithstanding that the receiving party has not complied with any of the requirements of this section.”

11. The decision to extend the time within which to file the Reference is a discretionary exercise of judicial authority. The law only requires that the court be satisfied that there are sufficient reasons for the exercise of the discretion and if satisfied, the court may also impose conditions for the grant of the extension orders upon the Applicant.
12. I have perused the pleadings herein and the Applicant has clearly expressed his desire to file a Reference out of time. The Tenant has also stated that there was a verbal promise by the Respondents to withdraw their notice to terminate tenancy but they did not. It has also been stated by the Tenant that he runs a hotel business in the suit premises and he had cleared his rent arrears by December 2022. I think in the circumstances; this is a proper case to exercise my discretion in favour of the Applicant.

The matter ought to proceed on the merits and I agree and am guided by the holding in the case of; *Esajji v Solanali* [1968] EA 218 where the court held as follows;-

“The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from the pursuit of his rights.”

13. In the final analysis, I do make the following orders;-
 - a. That the Tenant is granted leave to file and serve his Reference to the Respondents notice to terminate tenancy dated 11.10.2022 within the next fourteen days.
 - b. That the Tenant shall clear all outstanding rent arrears within the next thirty days from the date of this ruling, failing which the Landlord will have leave to levy distress for rent against the Tenant.
 - c. The status quo will otherwise be maintained.
 - d. The Tenant shall bear the costs of this Application assessed at Kshs. 20,000/=.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF SEPTEMBER, 2023.

HON. CYPRIAN MUGAMBI - CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL



Delivered in the presence of Mrs. Towett for the Landlords and in the absence of the Tenant and Counsel

