



**Mwangi & another v Marutani Teachers Sacco (Tribunal Case  
E942 of 2024) [2024] KEBPRT 1675 (KLR) (27 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1675 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E942 OF 2024  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
NOVEMBER 27, 2024**

**BETWEEN**

**PETER IRUNGU MWANGI ..... 1<sup>ST</sup> TENANT**

**MONICAH NJAMBI ..... 2<sup>ND</sup> TENANT**

**AND**

**MARUTANI TEACHERS SACCO ..... RESPONDENT**

**RULING**

**A. Dispute Background**

1. The Respondent herein served the tenants with a notice dated 24<sup>th</sup> June 2024 seeking termination of their tenancy with effect from 31<sup>st</sup> August 2024 on the grounds that the landlord was proceeding to sell the property as a whole as per the advertisement in the local Daily Nation and Standard newspapers and that the buyers require vacant possession of the same upon sale.
2. Being opposed to the said tenancy notice, the tenants filed this reference under Section 6(1) of Cap 301, Laws of Kenya on 28<sup>th</sup> August 2024. They also filed an application dated 27<sup>th</sup> August 2024 seeking for restraining orders against the landlord from evicting them from the suit premises.
3. Among the issues raised in the application is that the notice did not provide the tenants with the legally mandated opportunity to oppose the notice which was a violation of their rights. They also plead that they have heavily invested in the suit premises and an eviction therefrom would cause severe and irreparable harm including loss of business and income which cannot be adequately compensated by way of monetary damages. The application is supported by the affidavit of the 1<sup>st</sup> tenant sworn on 27<sup>th</sup> August 2024.
4. The application is opposed through the replying affidavit sworn on 9<sup>th</sup> September 2024 by one Anthony Kamuna who describes himself as the Chairman of the Respondent, wherein it is admitted



that the landlord served the impugned notice through its Lawyers. The affiant proceeds to give the historical background leading to issuance of the said notice annexing several documents to justify the same.

5. It is deposed that the Respondent is at an advanced stage of selling the suit property to Electrodata firm which required vacant possession thereof as per annexure marked 'AK-7'.
6. It is deposed that the impugned notice complies with all the necessary conditions set out in the relevant Act for termination of the tenancy and that the tenant has not demonstrated good and sufficient cause to warrant granting of the orders sought in their application.
7. The tenants filed a further affidavit sworn on 30<sup>th</sup> September 2024 by the 1<sup>st</sup> tenant wherein it is deposed that the landlord has failed to consider the significant investment and improvements made by them to the premises financially and in terms of creating a thriving business over the last six years. They claim to have invested over Kshs 1.2 Million in the suit premises and established a thriving business with six employees who depend on the business for a livelihood.
8. The tenants accuse the landlord of intention to evict them in order that it may get a tenant who can pay a higher monthly rent from Kshs 33,000/= to Kshs 45,000/= as per letter marked 'ICR-1'.
9. It is the tenants' case that there is no credible evidence to support the Respondent's claim of intention to sell the suit property and that the claim is merely intended to justify the eviction. There is no documentation or communication from the prospective buyer. The tenants deny existence of any valid lease agreement with the landlord and claims that the agreements relied upon by it are forgeries.
10. The application was on 10<sup>th</sup> September 2024 directed to be disposed of by way of written submissions. Both parties complied and the tenants' submissions are dated 29<sup>th</sup> September 2024 while those of the landlord are dated 3<sup>rd</sup> October 2024.

#### **B. Issues for determination**

11. The following issues arise for determination; -
  - a. Whether the tenants are entitled to the reliefs sought in the application dated 27<sup>th</sup> August 2024.
  - b. Who shall bear the costs of the application?

#### **Issue (a) Whether the tenants are entitled to the reliefs sought in the application dated 27th August 2024.**

12. The tenants are seeking for orders of injunction to restrain the landlord from evicting them from the suit premises pending the hearing and determination of this suit in which they are challenging a tenancy termination notice served upon them by the landlord.
13. There is no dispute that the tenants filed a reference against the said tenancy notice pursuant to Section 6(1) of Cap 301, Laws of Kenya. The said legal provision stipulates thus: -

“(1) A receiving party who wishes to oppose 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.” (underlining ours).



14. It is clear from the said provision that a tenancy notice ceases to have effect immediately upon a reference being preferred by the receiving party. The landlord is therefore not entitled to evict the tenants in the pendency of the instant reference.
15. The purpose of an injunction was espoused in the case of Assanand -vs- Pettitt (1978) eKLR at page 2/5 as follows: -

“The object of a temporary injunction as Mr. Khanna has reminded me, are as stated by Cotton L.J in Preston V. Luck (1884)27 Ch D at P. 505: -

“To keep things in status quo, so that, if at the hearing, the plaintiff obtain a judgment in their favour, the defendants will have been prevented from dealing in the meantime with the property in such a way as to make that judgement ineffectual”.

16. The court in the said case considered the principles upon which courts exercise such discretion as follows: -

“Broadly speaking, three matters have to be considered by the court in exercising judicially its undoubted judicial discretion whether to grant this very effective remedy, namely: -

- (a) Whether the applicant has shown that he has a prima facie case with a probability of success.....
- (b) Whether on a consideration of the balance of convenience, the plaintiff will suffer more if the injunction is not granted than the defendant will if it is granted.
- (c) Whether damages will be the adequate remedy. This is not so, for example, where the disruption caused by the defendant’s action is unjustified and so great that damages are not an adequate remedy”.

17. The tenants approached this Tribunal fearing that unless they were offered interim protection by way of an order of injunction, they would be evicted from the suit premises based on the impugned tenancy notice issued by the landlord.
18. We have looked at both parties’ submissions and it would appear that they relate to the question as to whether the tenancy notice should be upheld or dismissed. That is not the issue before us at this stage. We shall consider the said issue at the main trial and reserve our comments in that regard.
19. We are at this stage persuaded that the tenants have established the principles for granting an order for interim injunction with a view to preserving the status quo obtaining at the suit premises pending the hearing and determination of the instant suit.

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

20. 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 the costs of the application to abide the outcome of the main reference.



### **C. Orders**

21. In conclusion, the following orders commend to us; -

- a. The tenants' application dated 27<sup>th</sup> August 2024 is allowed in terms of prayers 2, 3, 5 & 6 thereof.
- b. The costs of the application shall abide the outcome of the main reference.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27<sup>TH</sup> DAY OF NOVEMBER 2024.**

**HON GAKUHI CHEGE**

**PANEL CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON. JOYCE AKINYI OSODO**

**PANEL MEMBER**

In the presence of:

Kiwinga for the landlord

1<sup>st</sup> tenant in person.

Parties to comply with order 11 of the CPR within 14 days hereof.

Hearing on 19/12/2024 virtually at 11.00 am.

