



**Muriuki v Kiraguri (Tribunal Case E098 of 2023)
[2023] KEBPRT 1116 (KLR) (3 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1116 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E098 OF 2023
CN MUGAMBI, CHAIR
NOVEMBER 3, 2023**

BETWEEN

ROSE NGIMA MURIUKI APPLICANT

AND

WILSON MWANGI KIRAGURI RESPONDENT

RULING

Introduction

1. The tenant's application dated 7.9.2023 seeks orders that the Respondent/Landlord be restrained from in any manner interfering with the tenant's possession and use of the premises located at Soko Mjinga block 11/99 pending the hearing of the application inter partes, an order that the Respondent do refund to the tenant Kshs. 350,000/= paid to the landlord by the tenant at the beginning of the tenancy and that thereafter the tenant be allowed to peacefully vacate the suit premises. Police assistance and the costs of the application have also been sought.

The Applicant's deposition

2. The tenant's affidavit in support of the application may be summarized as follows:-
 - a. That the tenant has been paying to the landlord the agreed rent of Kshs. 12,000/= per month pursuant to the lease agreement between the parties dated 24.1.2023.
 - b. That the landlord is threatening to evict the tenant without paying to the tenant Kshs. 350,000/= paid to the landlord at the beginning of the tenancy for utilization of the suit premises.
 - c. That the tenant is being denied the chance to recover her Kshs. 350,000/= by selling the utilization of the premises to another tenancy or by getting a refund from the landlord.



- d. That the landlord left behind the items listed under paragraph 10 of the tenant's affidavit and the same are well stored by the tenant who is willing to return to the landlord once the landlord refunds what he owes the tenant.
- e. That the Respondent ought to be restrained from evicting the tenant until the landlord refunds the tenant's money.

The Respondent's depositions

- 3. The Respondent's replying affidavit may be summarized as follows:-
 - a. That the tenancy agreement between the parties was created by the agreement dated/executed on 24.1.2023 at the agreed rent of Kshs. 12,000/= per month.
 - b. That the Respondent was running the business in the suit premises until the tenant bought it as a going concern at an agreed price of Kshs. 350,000/=. The tenant agreed to pay a further Kshs. 30,000/= in monthly installments of Kshs. 3,000/= with effect from 1.4.2023.
 - c. That the Respondent has no intention of evicting the tenant without the leave of the Tribunal.
 - d. That the tenant has not paid rent from June 2023 and an additional Kshs. 12,000/= under the provisions of the lease and therefore owes the landlord rent.
 - e. That the Respondent, well aware that the tenancy herein is a controlled tenancy, has never harassed the tenant.
 - f. That the payment of Kshs. 350,000/= was on account of goodwill and the purchase of movable properties in the suit premises.
 - g. That the Applicant has never reported the need for any major repairs of the suit premises.
 - h. That the items referred to by the tenant under paragraph 10 of her supporting affidavit belong to her, the tenant having purchased the same as set out hereinabove.
 - i. That the Applicant has never sought the authority of the landlord to sublet or handover the suit premises to another party and the landlord has consequently not unreasonably withheld any such consent.

Analysis and determination

- 4. The only issue that arises for determination is whether the tenant is entitled to the prayers sought in her application. On the prayer for orders restraining the Respondent from interfering with the tenant's possession and use of the premises, I do note that the landlord has in his replying affidavit stated expressly that he has no intention of interfering with the said tenancy and indeed has not so interfered in the past. I have also not found any evidence of the said interference in the tenant's application. I will however, out of abundant caution, grant the prayer that the landlord is not to interfere with the Applicant's tenancy in any illegal manner.
- 5. The Real issue that the tenant is actually pursuing is the refund of the Kshs. 350,000/= paid by herself to the landlord at or on the execution of the lease agreement dated 24.1.2023. In regard to this claim for Kshs. 350,000/=: the tenant has deposed as follows at paragraph 5 of her supporting affidavit:-

“Paragraph 5- That since the beginning of the tenancy, the landlord left behind very old items which could not be utilized for the intended Applicant's business which he now claims



to have sold to the tenant in the total sum of Kshs. 350,000/= contrary to their mutual agreement.”

Further, at paragraph 8, the tenant depones;

“That the tenant is being denied the chance to recover her money Kshs. 350,000/= from the landlord by selling the same utilization of the premises to another tenant and/or get a refund from the landlord and vacate peacefully.”

The above paragraphs form the basis of the tenant’s complaint and application.

6. Clause 1 of the agreement between the parties dated 24.1.2023 states;-

“The tenant has agreed to pay Kshs. 350,000/= (three hundred and fifty thousand) as a good will being part of the house hold items which include meat safe, tables, 20 chairs, TV, counter, meko, 2 chipts warmers, meat oven, deep freezer, potatoes chopper, 10 sufurias, 2 thermos, spoons, cups, plates, weigh machine (digital), fries pan, 2 pangas, knife, 1 axe, 30 litres jerican, 7 chopping boards, utensils, rake, etc.

7. It is clear from the above claim that the sum of Kshs. 350,000/= was to be utilized as goodwill and in the purchase of the items listed above. There is no suggestion that the landlord was to take back the goods listed above for valuable consideration on the tenant’s demand. The tenant’s suggestion that the items were old and not fit for purpose does not hold water as that is an issue she ought to have raised at or before the execution of the agreement. In any event, the tenant was purchasing the business items while the landlord was still using the same. To have expected the said items to have been in mint condition, would be to stretch the sale in the circumstances too thin. I do find that the tenant purchased the said business items on “As is where is basis” and further that the said items became her property upon execution of the sale agreement.

8. The payment of the sum of Kshs. 350,000/= was for goodwill and purchase of the business as a going concern with all the listed items. The lease agreement between the parties does not indicate which value was to be given to the goodwill and what value was to be given to the items in the premises. In the circumstances, even if I was to find that the tenant is entitled to goodwill, it would not be possible to state the exact figure the tenant would be entitled to.

9. The tenant has also complained that the landlord has denied her the chance to sell the premises to another tenant in order to recover the Kshs. 350,000/=. The landlord in his replying affidavit has deponed that the tenant has not sought his consent to sublet the premises and he cannot therefore be said to have withheld the said consent unreasonably. I am inclined to agree with the landlord as indeed I have found no evidence of a request by the tenant to be allowed to sublet the premises to another tenant. I am also of the view that the tenant does not require the permission of the landlord to dispose of the items under clause 1 of the lease agreement in any manner the tenant deems best, the items absolutely belong to her. In this regard, clause 5 of the lease agreement between the parties provides as follows:-

“The tenant shall not sublet or part with the possession the possession their (sic) of without authority or consent of the landlord with room for negotiation. In the event where the tenant may need to take or hand over to someone else, she should consult the landlord before handing over.”



The sublease clause above is clear, all the tenant needs to do is to notify the landlord and which she has not done. The assertion by the tenant that the landlord has denied her the opportunity to sell the business to any other party cannot therefore be true.

10. From the material placed before me, I do not find the tenant to be in any danger of eviction by the landlord. I have also found that in the circumstances of this case, the tenant is not entitled to a refund of the amount of money allegedly paid for goodwill for the reasons already advanced.
11. Consequently, I do not find any merits in the tenant's application and the same is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF NOVEMBER 2023

HON. CYPRIAN MUGAMBI

CHAIPERSON

3.11.2023

Delivered in the presence of;

Mr. Karanja for the tenant

In the absence of the landlord

