



**Njifu & another (Suing as personal reprsntatives of the Estate of Njibu Waweru  
- Deceased) v Sifuna t/a Kambaa Community Medical Centre (Tribunal Case  
E021 of 2024) [2024] KEBPRT 1743 (KLR) (13 December 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1743 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E021 OF 2024  
A MUMA, MEMBER  
DECEMBER 13, 2024**

**BETWEEN**

**MIRIAM WAMBUI NJIFU & CHARLES NJENGA NJIBU (SUING AS  
PERSONAL REPRRSENTATIVES OF THE ESTATE OF NJIBU WAWERU -  
DECEASED) ..... LANDLORD**

**AND**

**SAMMY WEKESA SIFUNA T/A KAMBAA COMMUNITY MEDICAL  
CENTRE ..... TENANT**

**RULING**

**A. Parties And Representatives**

1. The Applicant, Miriam Wambui Njifu and Charles Njenga Njibu, are representatives of the Estate of Njibu Waweru (Deceased) being the owner of the business premises situated on plot no. 13 Kambaa, Lari Location within Kiambu County (the “Suit Property”) had rented out the space to the Tenant (the “Landlord”).
2. The firm of Odero & Partners Advocates represents the Applicants in this matter.
3. The Respondent, Sammy Wekesa Sifuna T/A Kambaa Community Medical Centre, has rented the suit property from the Landlord (“the Tenant”).
4. The firm of B.N Ibabu & Associate Advocates represents the Tenant in this matter.

**B. The Dispute Background**

5. The Tenant moved this Honourable Tribunal vide a Reference dated 5<sup>th</sup> January 2024 and an Application dated 9<sup>th</sup> January 2024 which gave rise to Tribunal Case No. E021/2024. The said



application sought, inter alia, to oppose and challenge the Landlord's Termination Notice dated 11<sup>th</sup> December 2024.

6. On 10<sup>th</sup> January 2024, the Tribunal certified the matter as urgent thereby granting restraining orders against the Landlord from interfering with the Tenant's peaceful occupation pending hearing of the instant application. However, on the same day, the Landlady filed a Reference and Application of even date giving rise to Tribunal Case No. E035/2024.
7. Subsequently, on 15<sup>th</sup> January 2024, the Tribunal in case no. E035/2024 granted orders compelling the Tenant to pay rent as and when it fell due. Consequently, the Tenant filed an application dated 19<sup>th</sup> January 2024 seeking to consolidate the matters.
8. During the hearing on 24<sup>th</sup> January 2024, the Landlord notified the Tribunal in case no. E021/2024 that there was a pending litigation in case No. E035/2024. Without any prejudice and based on the failure by the Tenant to attend hearing, the Tenant's Application dated 9<sup>th</sup> January 2024 was dismissed for want of prosecution with costs to the Landlord.
9. Following this, the Tenant filed an Application for reinstatement of suit dated 24<sup>th</sup> January 2024. Accordingly, the Tribunal certified the application as urgent and directed the Tenant to effect service pending hearing.
10. During the hearing on 20<sup>th</sup> March, 2023, the Tribunal allowed the Tenant's application for reinstatement as unopposed. Thereafter, parties were directed to file their submissions with respect to the Tenant's application dated 9<sup>th</sup> January 2024.
11. Accordingly, the Landlord filed a Replying Affidavit dated 8<sup>th</sup> April 2024 seeking to oppose the Tenant's application dated 9<sup>th</sup> January 2024. Upon filing of submissions by all parties, the matter was scheduled for ruling on 3<sup>rd</sup> June 2024.
12. On 3<sup>rd</sup> June, 2024, the Tribunal in its ruling consolidated both files with Tribunal Case No. E035/2024 as the lead file. Consequently, the Tenant filed an application dated 31<sup>st</sup> July 2024 seeking access of the suit property.
13. Subsequently, on 5<sup>th</sup> August 2024, the Tribunal ordered the Landlady to re-open the suit property thereby granting the Tenant unconditional and unrestricted access to the suit property pending inter-partes hearing. On 13<sup>th</sup> August 2024, the Tenant filed an application seeking to find the Landlady in contempt of the aforesaid orders dated 5<sup>th</sup> August 2024.
14. Following this, the Tribunal directed parties to file their submissions. Subsequently, the matter was set for ruling with respect to the Tenant's application dated 31<sup>st</sup> July 2024.

### **C. Landlord's Claim**

15. The Applicants submits that the Tenant is in rent arrears of Kshs. 630,000/= which he has failed to pay despite making demands. Further, the Applicants state that the death of the Landlord should not exempt the Tenant from his obligations.

### **D. Tenant's Claim**

16. In response, the Tenant under paragraph 17 of his Supporting Affidavit dated 9<sup>th</sup> January 2024, depones that the Applicants have no locus standi to challenge the tenancy entered between the Estate of the Late Njibu Waweru(deceased).



## E. Issues For Determination

17. Upon perusal, I find the following to be the main issue for determination:

Whether the Landlord's Termination Notice dated 11<sup>th</sup> December, 2023 is valid.

## F. Analysis And Findings

18. Section 2 of the Landlord and Tenant (Sops, Hotels and Catering Establishments) Act, Cap 301 Laws of Kenya ("the Act") defines a controlled tenancy as:

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.

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;

19. In this case, it is not disputed that Njifu Waweru (deceased) entered into a written Lease Agreement dated 1<sup>st</sup> June, 2018 (herein "the Agreement") to lease the suit property to the Tenant for a term not less than 3 years at a monthly rent of Kshs. 15,000/= subject to monthly deductions of Kshs. 13,000/= as costs incurred by the Tenant for renovation. The balance of Kshs. 2,000/= was agreed to be remitted to the Landlord as payable monthly rent. As such, I am satisfied that the tenancy between the Landlord and the Tenant relates to a controlled tenancy within the meaning under Section 2 of the Act.

20. Subsequently, Section 4(2) of the Act provides that:

"A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, .... shall give notice in that behalf to the tenant in the prescribed form."

21. On 11<sup>th</sup> December, 2023, the Applicants as legal representatives of Njifu Waweru (deceased) issued a termination notice in the prescribed form to the Tenant. The Applicants sought to terminate the Agreement effective on 1<sup>st</sup> March 2024 due to rent arrears and lack of consent from the Landlord to develop the suit property. As such, it is my finding that the said notice is deemed to be in the correct form and within the prescribed statutory period. However, it is worth noting that the proceedings of Tribunal case E035/2024 were instituted by the Applicants as the legal representatives of the Estate of Njifu Waweru (deceased) without letters of administration to confirm their authority.

22. In *Nancy Njeri Gitau & another v James Muchone Njuga & another* [2021] eKLR, this Tribunal placed emphasis on the requirement as evidence of the authority to act in any proceedings as legal representatives. It held as follows:

"...This was important since appointment of a legal representative is a legal process and one cannot act as such until a grant representative is issued by a competent court of law (see



virtually Edith Wambui Otieno – vs- Joash Ochieng Ougo & Another (1987) eKLR) at page 9/12).

36. I therefore hold that the suit against Esther Nyambura Watitu has not been proved to the required standard since there is no evidence that she is the legal representative of the deceased Landlord neither is there evidence that there has ever been any Landlord/Tenant relationship between her and the Tenants.”
23. Flowing from the above, the evidence on record including the impugned termination notice and Reference in Tribunal Case no. E035/2024 as accompanied by the Application thereto, were done by the Applicants one Miriam Wambui Njifu and Charles Njenga Njifu. As such, there is no evidence that the Applicants are the legal representative of the deceased Landlord neither is there proof that there existed any Landlord-Tenant relationship between the Applicants and the Tenant herein.
24. It is trite law that he who alleges must prove. As such, the burden of proof lies with the Applicants to prove that they are entitled as legal representatives to act or institute any proceeding on behalf of the Estate of the deceased Landlord. Therefore, it is my finding that the Tenants are non-suited as against the Applicants whose interest in the suit property is unknown.
25. Turning to the issue on substance, the Applicants sought to terminate the Agreement due to accrued rent arrears and lack of consent to carry out development. On the issue of rent arrears, Section 3 (3) of the Act provides: -
- “The landlord ... shall keep a rent book in the prescribed form, of which he shall provide a copy for the tenant and in which shall be maintained a record, authenticated in the prescribed manner, ... the details of all payments of rent ....”
26. In this case, the Applicants have merely asserted and have not adduced any document or statement of account in support of their claim for rent arrears. On the other hand, the Tenant has not adduced proof of payment of rent. As such, the Tribunal is not in a position to determine whether there are accrued rent arrears.
27. On the issue of lack of authority, the Tribunal takes judicial notice that clause 2 of the Agreement which the Applicant one Miriam Wambui Njifu signed and witnessed sought to give the Tenant authority to carry out developments and further deduct Kshs. 13,000/= per month for a period of 3 years as costs for renovation. Therefore, I am convinced that the claim by the Applicants is without basis.
28. In light of the above, it is my finding that the impugned Termination Notice dated 11<sup>th</sup> December 2023 is invalid for want of locus standi as legal representatives and further for want of proof of the claims alleged in the notice.

## G. ORDERS

29. In the upshot, the Landlord’s Reference dated 10<sup>th</sup> January 2024 is hereby dismissed in the following terms:
- Tenant’s Reference dated 5<sup>th</sup> January 2024 is hereby allowed;
  - Tenant to continue in occupation and to pay rent as and when it falls due;
  - Landlord and or agents are not to interfere with the Tenant in any way whatsoever other than lawful distress for rent with leave of the Tribunal;
  - Landlord is at liberty to issue a new notice to terminate and or increase rent;



- e. OCS Kijabe Police Station to assist in compliance especially break in for access by the Tenant of the suit premises; and
- f. Each party shall bear its own costs.

**HON. A MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 13<sup>TH</sup> DAY OF DECEMBER 2024**

In the presence of the tenant and abuga holding brief for odero for the landlord.

**HON. A MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

