



**Otieno v Ayugi & another (Tribunal Case E038 of 2023)
[2024] KEBPRT 1206 (KLR) (23 August 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1206 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E038 OF 2023
J OSODO, CHAIR
AUGUST 23, 2024**

BETWEEN

FELIX OTIENO APPLICANT

AND

LINDA AYUGI 1ST RESPONDENT

EVERLYNE AYUGI 2ND RESPONDENT

JUDGMENT

A. Dispute Background

1. The tenant/applicant moved this Tribunal vide a reference under Section 6 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301, dated 29th May 2023 seeking to challenge a notice to terminate his tenancy dated 19th April 2023 issued by the respondents herein.
2. The tenant/applicant filed a notice of motion under a certificate of urgency dated 29th May 2023 seeking for the following orders; -
 - i. That the application be certified urgent.
 - ii. That the respondent be restrained from interrupting the applicant's quiet enjoyment, use and occupation of the suit premises at Kisumu/Kanyakwar/1049 situated at Kisumu town pending the hearing and determination of the application/reference.
 - iii. That the applicant continues to pay rent at the current rate being KES. 20,000 per month.
 - iv. That an order does issue for reassessment of rent payable by the tenant herein in respect of the suit premises.
 - v. That the O.C.S Obunga Police Station do ensure compliance of the orders.



- vi. That the court issues any other orders it may deem fit.
 - vii. That costs of the application be provided for.
3. The application is supported by an affidavit of even date in which the applicant deposes as follows; -
- i. That the tenant/applicant received a purported notice to vacate the suit premises on 19th April 2023.
 - ii. That it is the respondents herein who have gone against the terms of the lease agreement by seeking to evict the tenant without any valid reason and without following the due process.
 - iii. That no demand notice of any arrears has ever been issued to the tenant by the respondents.
 - iv. That the tenant has been at the suit premises since February 2018 operating a bar and restaurant and has spent tremendous amounts of money renovating the suit premises including a recently erected canopy.
 - v. That the tenant has paid for a liquor license to the County liquor Licensing Board for the year 2023 as well as a trade license and will suffer huge losses if evicted from the suit premises.
 - vi. That the applicant/tenant has no other source of income except the said business.
 - vii. That the tenant is ready to continue to pay rent at the current rates.
4. On 6th June 2023 this court issued interim orders of injunction against the respondents pending hearing of the application inter-partes.
5. The application is opposed vide a replying affidavit dated 17th July 2023 wherein the respondents depose as follows; -
- i. That the suit premises were leased by a lady called Miriam who opened a bar & restaurant therein for a while and then disappeared. The operations were then assumed by the applicant who had no lease agreement with the respondent but was let to continue because the respondents assumed that he was doing the same on behalf of the said lady.
 - ii. That the applicant herein has operated the bar business in the premises for a while until it became necessary for the respondents to assume possession of the premises purely for purposes of renovation to bring it to a competitive level to enhance rental income.
 - iii. That the applicant is in gainful employment elsewhere and runs a chain of bars within Kisumu and was duly served with a notice in the prescribed form. A copy of the notice is annexed as "LA-1".
 - iv. That the respondents intend to assume possession of suit premises and renovate it to enhance its value for the benefit of the many beneficiaries to the estate.
 - v. That the parties have had discussions and the respondents have informally expressed to the applicant the necessity to vacate the premises at this stage but the applicant has exhibited arrogance to the respondents on account of their gender and therefore feels that the respondents cannot run viable investments from the premises which they inherited from their late parents.
6. At a court hearing on 19th July 2023, parties were directed to comply with Order 11 of the Civil Procedure Rules and both complied by filing their witness statements which we shall consider as we deal with the issues for determination.



7. At the date of the virtual hearing on 4th July 2024, only the landlord was present despite the tenant having been served with a hearing notice dated 3rd July 2024 which has been duly filed. The hearing therefore proceeded ex-parte with the 1st respondent as the landlord witness number 1 who stated that she wished to adopt the documents filed as her evidence in chief in the matter.

B. Issues for determination

8. The following are the issues for determination; -
- a. Whether the complaint dated 29th March, 2023 is valid.
 - b. Who is liable to pay costs?

Issue (a) Whether the complaint dated 29th May, 2023 is valid.

9. The tenant applicant filed a complaint dated 29th May 2023 challenging the notice to terminate tenancy issued by the respondents which is dated 19th April 2023 and due to take effect on 1st July 2023.
10. The applicant in his witness statement states that the respondents' actions are illegal and that the notice to terminate his tenancy is misconceived.
11. The applicant also states that he has never been issued with any demand notice for rent arrears and that the respondents are seeking to evict him without any valid reason.
12. Additionally, the applicant states that he has spent tremendous amounts of money in renovating the suit premises including paying for a liquor license as well as a trade license for the year and that he will suffer huge losses if evicted from the suit premises.
13. The 1st respondent on the other hand in her witness statement has stated that they seek possession of the suit premises for purposes of renovating the premises to bring it to a competitive level to enhance rental income. She adds that the applicant is in gainful employment elsewhere as a Senior Director of University of Washington, Kisumu and runs a chain of bars including 'Storm Bar' at Kondele along Kondele-Kibos road about 300 meters from the suit premises.
14. The 1st respondent in her witness statement adds that the applicant has put up structures and sublet the suit premises to another tenant without the consent of the respondents and continues to receive rent from the same as well as making other modifications at the suit premises without involving the respondents.
15. Furthermore the 1st respondent states that the notice to terminate tenancy was served upon the applicant in good faith and in strict compliance with the law.
16. We have perused the notice to terminate tenancy dated 19th April 2023 and we find that the said notice is in the form prescribed under Section 4(2) of Cap 301 Laws of Kenya which stipulates as follows; -
- (2) A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.
17. The grounds stated in the said notice to terminate tenancy is that the respondents would like to have the premises for their own personal use.



18. According to Section 7(1)(g), Cap 301 Laws of Kenya one of the grounds on which the landlord may seek to terminate tenancy is ; -

“(g) subject as hereinafter provided, that on the termination of the tenancy the landlord himself intends to occupy for a period of not less than one year the premises comprised in the tenancy for the purposes, or partly for the purposes, of a business to be carried on by him therein, or at his residence.”

19. Based on the aforesaid provision, we find that the ground upon which the respondents/landlords seek to terminate tenancy is valid and the tenant/applicant has not provided any reason why he does not find the said reason valid.
20. This tribunal therefore finds and holds that the notice to terminate tenancy dated 19th April 2023 is valid and lawful and the tenant is not entitled to the orders sought in the application dated 29th May 2023.

Issue (b) Who is liable to pay costs

21. 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 to the respondents.

C. Orders

22. In conclusion, the following final orders commend to us; -
- a. The application dated 29th May 2023 is dismissed with costs.
 - b. The notice to terminate tenancy dated 19th April 2023 is declared valid and lawful.
 - c. All interim orders are hereby discharged and/or vacated forthwith.
 - d. The tenant shall vacate the suit premises within 30 days hereof and in default, shall be evicted therefrom by a licensed auctioneer who shall be provided with security by the O.C.S Obunga Police Station.
 - e. Costs of KES. 30,000 to the landlords/respondents

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23RD DAY of AUGUST 2024.

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE

(PANEL MEMBER)

In the presence of:

Parties absent.

