



Janet Kaimuri Mwai t/a Jamaica Stores v Nkatha & another (Tribunal Case E049 of 2022) [2023] KEBPRT 617 (KLR) (8 September 2023) (Ruling)

Neutral citation: [2023] KEBPRT 617 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E049 OF 2022
A MUMA, AG. CHAIR
SEPTEMBER 8, 2023**

BETWEEN

JANET KAIMURI MWAI T/A JAMAICO STORES APPLICANT

AND

LUCY NKATHA 1ST RESPONDENT

JOHN M'MBIJIWE T/A BEALINE KENYA AUCTIONEERS . 2ND RESPONDENT

RULING

A. Parties and their Representatives

1. The Applicant Janet Kaimuri Mwai T/A Jamaica Stores is the tenant and rented space on the suit premises located on plot No Nkuene/Taita/101 at Nkubu Township. (hereinafter the “tenant”).
2. The firm of Basilio Gitonga, Muriithi & Associates represent the Tenant in this matter.
3. The 1st Respondent Lucy Nkatha is the Landlady and the proprietor of the suit property. (hereinafter the “landlord”)
4. The 2nd Respondent John M'Mbijiwe T/A Bealine Auctioneers is an auctioneering firm that was instructed by the landlord to issue the tenant with a proclamation notice (hereinafter the “auctioneers”)
5. The Firm of Mutea Mwange & Associates Advocates represent the respondents in this matter.

B. The Dispute Background

6. The suit was instituted by the tenant vide a Reference dated 15th November 2022 and a Notice of Motion Application under Certificate of Urgency dated 14th November 2022 under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301. The tenant was



seeking orders restraining the landlords from proceeding with the intended repossession or removal from the premises of the tenant's movable properties.

7. The tenant was also opposing a Notice issued by the landlord in September 2022 requiring them to vacate within 30 days.
8. Respondents have filed a Replying Affidavit dated 9th February 2023 opposing the assertions by the Tenant and claiming that the notice was valid based on the fact that the premises are not habitable.

C. Jurisdiction

9. The jurisdiction of this Tribunal is not in dispute.

D. The Tenant/Applicant's Claim

10. The Tenant filed a Reference dated 15th November 2022 and a Notice of Motion Application under Certificate of Urgency dated 14th November 2022 seeking protection against the threats of proclamation and eviction by the landlord.

E. The Landlord/Respondent's Claim

11. The Respondent filed a Replying Affidavit dated 9th February 2023 opposing the assertions as raised by the tenant in their application.

F. Issues for Determination

- a. Whether the tenant Notice to terminate tenancy issued by the landlord and the reasons advanced are valid?
- b. Whether the levy of distress by the landlord was lawful?

G. Analysis and Determination

12. The tenant approached this Tribunal seeking to restrain the landlord from proceeding with an intended repossession and/or removal of their property from their premises through the strength of a proclamation notice that was issued on the tenant.
13. The tenant alleges that the landlord seeks to unlawfully evict them and at the same time to illegally distress for rent.
14. The landlord issued the tenant with a letter seeking to terminate their tenancy in September 2022. The grounds upon which the landlord sought to terminate the tenancy was that the premises were not habitable as was declared in an inspection report issued on 14th September 2022 by the Department of Health of Meru County Government.
15. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya Act at section 4(2) provides that:

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.



16. Section 4(4) further provides that:

No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, as shall be specified therein

17. In the case of *Manaver N. Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited*, Civil Appeal No 203 of 1994 it was stated as follows;

“The Act lays down clearly and in detail, the procedure for the termination of a controlled tenancy. Section 4(1) of the Act states in very clear language that a controlled tenancy shall not terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the tenant. The notice must also specify the ground upon which termination is sought. The prescribed notice in Form A also requires the landlord to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice.”

18. In this case the Landlord issued the tenant with a Notice to terminate tenancy in September 2022 which was to take effect within 30 days. Based on the above provision, the said notice was to take effect after one month which is in contravention of the Provisions of *CAP 301*. As such the said notice cannot be deemed to be valid in relation to the period accorded to the tenant.

19. Having established that the Notice issued by the Landlord to the tenant was not valid, in relation to the period, the other question for determination before the Tribunal is with regards to the reasons advanced for wanting to terminate the tenancy.

20. In this case the landlord's reasons are that the premises are not habitable as per the report of the Department of Health Meru County. The report outlines several repairs that need to be carried out on the premises.

21. The tenant has questioned the authenticity of the Report from the County Government on the premises that the same was acquired fraudulently. I take note that the tenant has not provided any proof before the Tribunal to prove their assertions, as such they have not satisfied the rule of evidence that he who alleges must prove. The Tribunal is then persuaded to uphold the Report.

22. I also acknowledge the tenant's assertions that there are 15 other tenants in the premises for whom the eviction should also apply. There is no poof again, that the eviction only applies to this one tenant. Additionally, the report from the County Government is written in the name of the landlord in general and not to one specific tenant.

23. As such, despite the fact that the notice period was not sufficient, I find that the grounds provided outweigh the assertions by the tenant. There is no sufficient evidence before the Tribunal to rebut the report from the County Government.

24. Having dealt with the issue of the Notice, I shall now proceed to address the issue on distress for rent. The tenant was issued with a proclamation notice through which the landlord sought to recover arrears amounting to Kshs. 120,000.00

25. The landlord does not deny having issued the said notice. They claim that the same was issued by virtue of the fact that the tenant had failed to adhere to the notice to vacate and at the same time, they had failed to pay rent.



26. It is not in dispute that the tenancy in question is a Controlled Tenancy. As such the same should be governed by the provisions of [CAP 301](#).
27. Section 12 of [CAP 301](#) provides as follows;

Powers of Tribunals;

1. A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power-
 - (h) to permit the levy of distress for rent

28. The landlord as such was within his rights to levy distress.
29. Having established that the notice was invalid but on health ground I proceed to order as follows;

H. Orders

- a. The upshot is that the Tenant's Reference dated 15th November 2022 and the Application dated 14th November 2022 are partially allowed in the following terms;
- b. The tenant handover vacant possession of the premises to the landlord within 3 days failure to which the landlord shall be at liberty to break in.
- c. Each party shall bear their own Costs.

HON A. MUMA

AG. CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 8TH DAY OF SEPTEMBER, 2023 IN THE ABSENCE OF THE PARTIES

HON A. MUMA

AG. CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

