



Kibe v Omondi (Tribunal Case E053 of 2024) [2024] KEBPRT 959 (KLR) (3 July 2024) (Ruling)

Neutral citation: [2024] KEBPRT 959 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E053 OF 2024
CN MUGAMBI, CHAIR
JULY 3, 2024

BETWEEN

GIDEON GATHIGI KIBE TENANT

AND

ANNAH MOTUKA OMONDI LANDLORD

RULING

1. The Tenant's Application dated 29.04.2024 seeks orders that the Landlady/Respondent be ordered to re-open the Tenant's premises to wit the pool table shop situate on plot No. 14246/4 Modern Trading Centre Lanet. The Tenant has also prayed for an order that the Tribunal investigates his Complaint and makes an appropriate determination.

The Tenant's depositions

2. The Tenant's affidavit in support of his Application may be summarized as follows;-
 - a. That he is a Tenant of the Respondent in the suit premises where he owns a pool table business paying the monthly rent of Kshs. 6,000/=.
 - b. That on 17.04.2024, the Respondent entered the suit premises in the pretext of carrying out some repairs but instead pushed the pool table to a corner and locked the suit premises.
 - c. That the Respondent has refused to open the suit premises exposing the Tenant to daily losses of Kshs. 2,500/=.

The Respondent's depositions

3. The Respondent's replying affidavit sworn on 02.05.2024 may be summarized as follows;-
 - a. That the suit premises has become a subject of interest to the local community leadership and the police due to increased cases of insecurity.



- b. That suspected individuals who spend a lot of time at the suit premises in the guise of playing pool have been arrested at the said premises.
- c. That consequently, the Respondent notified the Tenant that the activities therein constituted a serious and substantial breach of his obligation on his use and management of the premises. The Respondent also informed the Tenant that she would be carrying out substantial works of maintenance as the Tenant's customers had substantially damaged the suit premises.
- d. That it is unreasonable to commence the maintenance works without obtaining possession of the premises.
- e. That the Landlord did not unlawfully lock the suit premises as alleged by the Tenant.

The Tenant's Further Affidavit

- 4. The Tenant's Further Affidavit may be summarized as follows;-
 - a. That the excuse given by the Landlord that the Tenant's business attracts criminals is untruthful, lame and an afterthought.
 - b. That the Landlord has not presented any single case of arrests.
 - c. That the premises houses a hair salon, wines and spirits shop and a posho mill and all these businesses attract different kinds of customers and therefore, for the Respondent to pick out only the Applicant's business is an act that amounts to witch hunt and outright harassment.
 - d. That the Landlady needed the permission of the Tribunal to carry out any repairs and in any case, the Tenant is able to carry out the repairs himself.
 - e. That the Tenant believes the Landlady's true intention is to evict the Tenant.

Analysis and determination

- 5. The only issue that arises for determination in this Application is whether the Tenant is entitled to the orders sought in his Application.
- 6. The parties have not annexed any written lease agreement between themselves and I am therefore satisfied that the tenancy herein is a controlled tenancy subject to and governed by the provisions of Cap 301 of the Laws of Kenya.
- 7. The Tenant's Complaint is that the Landlady/Respondent locked the suit premises on 17.04.2024 while pretending to carry out the repairs. The Landlady has denied unlawfully locking the suit premises but in the same breath she states that she wanted to carry out repairs that necessitated that the Tenant hands over possession of the premises. The Landlady's response seem to suggest that the Landlady in her quest to repair the suit premises, LAWFULLY locked the same. I do find that indeed the Landlady unlawfully locked the suit premises and the action of the Landlady amounted to an illegal attempt at terminating the tenancy.
- 8. The Landlady has also deposed that the local community leadership and the police have held suspicions that the suit premises harbour criminals and that some individuals have actually been arrested at the suit premises. I have not seen any evidence of any such arrests and none of the community leaders has sworn an affidavit in support of the allegations by the Landlady. This allegation is compounded by the deposition by the Tenant that the suit premises or rather the plot in which the premises is situated hosts other businesses like the hair salon, a posho mill and a wines and spirits shop.



The Tenant has deponed that these businesses attract all manner of clientele and I think the Tenant is justified in stating that the Landlady is on a witch hunt. I am of the further view that the Tenant would in these circumstances be justified in believing he is being discriminated against.

9. The Landlady is entitled to terminate the tenancy between her and the Tenant; she must however follow the procedure laid down under the Act. In this regard, in the case of; Manaver N. Alibhai t/a Diani Boutique vs South Coast Fitness & Sports Centre Limited, Civil Appeal No. 203 of 1994 cited in the case of; Fredrick Mutua Mulinge t/a Kitui Uniform vs Kitui Teachers Housing Co-operative Society Limited [2017] eKLR, the court held;

“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 two 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.”

10. The Landlady has not issued to the Tenant the termination notice contemplated by Section 4(2) of Cap 301 and any attempts to terminate the tenancy herein absent the said notice are invalid and of no legal effect.
11. In the circumstances, I do find merits in the Tenant’s Application and allow the same in terms of prayer (2) thereof.
12. The Complaint raised by the Tenant has been answered by my findings in this Ruling. Having found that the Landlady unlawfully locked the suit premises and further that no valid notice to terminate the tenancy has been served upon the Tenant, I allow the Complaint in terms that the Landlady is hereby enjoined from in any manner illegally terminating the tenancy herein.
13. The Tenant shall have the costs of the Application and the Complaint.
14. This file is hereby marked as closed in the above terms.

Dated, signed and delivered virtually this 3rd day of July, 2024

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of; Mr. Kiburi for the Tenant and in the absence of the Landlord and Counsel.

BPRT CASE NO. E053 OF 2024 (NAKURU) 3

