



**Kariuki v Matei & another (Tribunal Case E078 of 2024)
[2024] KEBPRT 888 (KLR) (3 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 888 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E078 OF 2024
A MUMA, MEMBER
JULY 3, 2024**

BETWEEN

ROBERT KIMARU KARIUKI TENANT

AND

NZISIVA MATEI LANDLORD

AND

KINANGO HOMES LTD AGENT

RULING

A. Parties And Their Representatives

1. The Applicant Robert Kimaru is the tenant and rented space on the suit premises within Ujamaa in Likoni Mombasa County (“the suit property”) belonging to the Respondent herein. (hereinafter the “tenant”).
2. The Tenant appears in person in this matter.
3. The 1st Respondent Nzisiva Matei is the Landlord and the owners of the Suit Property (hereinafter the “landlord”).
4. the 2nd Respondent is the Agent who was acting under the instructions of the 1st Respondent.
5. The 1st and 2nd Respondents appear in person in this matter.

B. The Dispute Background

6. The current suit was instituted by the tenant vide a Reference and a Notice of Motion Application under Certificate of Urgency dated 14th March 2024 under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301. The tenant was seeking orders compelling



the Landlady to open the premises and allow the tenant unlimited access to enable them conduct their business, orders restraining the landlord from evicting, harassing or in any way interfering with their quiet occupation of the suit property.

7. The Respondents have filed a Replying Affidavit dated 18th April 2024 in which they oppose the tenant's reference and application by bringing in new facts to the matter. The Landlord avers that the tenant sold the business to a third party, one Loise Baya Thoya (hereinafter the "third party") without their knowledge or approval.
8. The Landlord further states that it was not until the third party began renovating the premises that the landlord found out about their arrangement with the tenant. That after the landlord found out he entered into a tenancy agreement with the third party upon payment of deposit and rent.
9. The Landlord then claims that by virtue of the foregoing the tenant abandoned the tenancy and the same was then terminated.

C. Jurisdiction

10. The jurisdiction of this Tribunal is in dispute.

D. The Tenant/applicant's Claim

11. The Tenant filed a Reference and a Notice of Motion application under Certificate of Urgency and supporting affidavit dated 14th March 2024 seeking orders compelling the Landlord to open the premises and allow the tenant unlimited access to the premises, additionally, orders restraining the landlord from interfering with their quiet occupation of the suit property.

E. The Landlord/respondent's Claim

12. The respondent has filed a Replying Affidavit wherein they claim that the relationship between themselves and the tenant was terminated since the tenant abandoned the tenancy by selling the same to a third party.

F. Issues For Determination

- a. Whether there exists a Tenancy Relationship between the Landlord and the Tenant?

G. Analysis And Determination

13. The tenant approached this Tribunal seeking orders to compel the landlord to open the premises and orders restraining them from interfering with their quiet occupation of the premises.
14. The tenant alleges that the basis for seeking the said orders was that the landlord had been interfering with their quiet occupation by denying them access to the suit property.
15. The landlord responded through filing a Replying Affidavit wherein they introduced new facts to this Tribunal as to why the Tenant did not have access to the property.
16. The landlord claims that the tenancy between themselves and the tenant was abandoned through the tenant's acts of transferring the business to the third party. to support his assertion, he has annexed an Agreement dated 5th March 2024 and titled "Goodwill Agreement" entered into between the tenant as the Vendor and the third party as the Purchaser.
17. Clause 5 and 9 of the aforementioned agreement provides as follows respectively;



5. The purchaser shall take over possession of the said pharmacy shop upon payment of Kenya Shillings Fifty Thousand Only (Kshs. 50,000/=) and/or upon signing of this Agreement.
9. The parties herein agree that the monthly rent in respect to the pharmacy shop shall be paid directly to the landlord, the owner of the shop as required by law.
18. From the above it is evident that the tenant did transfer the business to the third party for the stated fee. However, I have inspected the attached agreement and I observe that the tenant did not sign the agreement. It has been attested to but there is no signature by the tenant whereas the signatures of all the other parties are present.
19. In addition to the foregoing, the Landlord has in a further attempt to show this Tribunal that there is no relationship between themselves and the tenant, attached a Tenancy Agreement between themselves and the Third Party. The same was entered into upon realization by the Landlord that the Tenant had transferred the business to the third party. The agreement has been signed by both parties and therefore qualifies as a binding contract.
20. Despite the fact the Goodwill Agreement can be put to question because of the tenant's missing signature, this Tribunal cannot turn a blind eye to the tenancy agreement between the landlord and the third party.
21. It is my opinion therefore that at the point where the third party came in, signed the agreement and took over possession of the property, that the relationship between the landlord and the tenant ceased to exist. This Court is further convinced by the above facts because the tenant has not provided any evidence to the contrary or to oppose the assertion by the landlord.
22. As a result, I am persuaded to hold that there is no relationship between the parties herein and proceed to order as follows;

H. Orders

23. The upshot is that the Tenant's Reference and Application dated 14th March 2024 are hereby dismissed.
 - a. The Landlord shall continue with the tenancy relationship between themselves and the third party as per the tenancy agreement.
 - b. The tenant is hereby restrained from interfering with the quiet possession of the third party in any way.
 - c. The Landlord shall have costs assessed at Kshs. 10,000.00

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 3RD DAY OF JULY 2024 IN THE ABSENCE OF THE PARTIES.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

