



**Ben Mbugua Gathuri t/a Auckland Agencies Auctioneers & another v
Mbuina's Agriculture & Farm & another (Tribunal Case E660 of 2023)
[2023] KEBPRT 693 (KLR) (Civ) (1 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 693 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E660 OF 2023
P KITUR, MEMBER
DECEMBER 1, 2023**

BETWEEN

**BEN MBUGUA GATHURI T/A AUCKLAND AGENCIES
AUCTIONEERS 1ST APPLICANT**

AUCKLAND STORAGE INVESTMENT YARD LIMITED 2ND APPLICANT

AND

MBUINA'S AGRICULTURE & FARM 1ST RESPONDENT

BARBARA KOINANGE 2ND RESPONDENT

RULING

A. Parties And Representatives

1. The 1st and 2nd Applicants Ben Mbugua Gathuri T/A Auckland Agencies Auctioneers and Auckland Storage Investments Yard Limited are the tenants and rented out space from the Respondent on the suit property known as L.R No. 209/22, Ruaka (both hereinafter known as the 'tenant')
2. The Tenants are represented by Kaloki Ilia & Mbugua Advocates LLP.
3. The 1st and 2nd Respondents Mbuina's Agriculture & Farm and Barbara Koinange are the Landlords and the proprietors of the Suit Property known as Plot Number 209/22, Ruaka (both hereinafter known as the 'Landlord')
4. The firm of Sheila Mugo & Advocates represent the Landlord in this matter.



B. The Dispute Background

5. The Tenant avers that the Landlord has threatened to unlawfully evict the Tenants from its place of business located on the suit property without issuance of a lawful notice and/ or justifiable cause.
6. He stated that he entered into an agreement with one Peter Waihumu Muigai who sub-let the tenancy to him at a monthly rent of Kshs. 150,000/= and that the Landlord (s) was fully aware and consented to the sub-letting of the premises
7. The Tenants stated that they have operated business over the demised premises for a period of over 5 years as their primary place of business and have built a formidable reputation and goodwill on the demised business premises.
8. The Tenants further asserted that they erected sophisticated structures on the demised business premises, at their own costs and that they have stored various third-party goods including motor vehicles and merchantable goods.
9. That upon the expiry of the lease, on 31st May 2023, the Tenant and the 2nd Respondent entered into an agreement in which the Tenant was to take over the lease at a monthly rent of Kshs. 200,000/=
10. That following this agreement, the Tenant proceeded to pay the rent of Kshs. 200,000/= for the month of June 2023.
11. He was surprised when he received a message from the 2nd Respondent asking him to vacate the premises, and that the suit premises had been let out to a third party.
12. Feeling prejudiced by the Landlords action, the Tenants approached this honorable tribunal vide A reference and notice of motion application under certificate of urgency dated 4TH July 2023 seeking orders that;
 1. Spent
 2. That this Honourable Tribunal declares the Tenancy controlled
 3. That this Honourable tribunal be pleased to grant the 1st and 2nd Applicant leave to deposit the monthly rent of 200,000 in court until hearing and determination of the suit herein.
 4. 3. Spent
 5. That this Honourable Tribunal be pleased to issue a permanent injunction prohibiting the 1st and 2nd Landlord from interfering with the 1st and 2nd Tenant/Applicants peaceful possession and enjoyment of the demised business premises.
13. The Landlord in response to the Tenant's Reference and Application filed a Replying Affidavit dated 18th July 2023 claiming that he entered into a lease agreement with Peter Muigai which ended on the 31st May 2023 due to effluxion of time.
14. That owing to the difficulties during the tenancy period, including late payment of rent, the Landlord issued a notice of non-renewal of lease on 3rd May 2023.
15. That the Tenant, one Peter Muigai, requested for more time to be able to vacate the premises owing to the nature of the goods stored within the premises and he offered to pay storage fees of Kshs. 200,000/= for storage until the end of June.



16. In Response, the Tenant filed a further affidavit stating that Peter W Mungai was his business partner and the Head lessor and director of the 2nd Applicant company.
17. That by virtue of that business partnership, Mr. Petr Mungai offered the subject property which he leased from the Landlords/Respondents for the purposes of him setting up his business and therefore the Tenants have been in possession of the premises for
18. The Landlord filed a supplementary affidavit reiterating that she was not interested in creating a tenancy agreement with the Tenant herein for the reason that she had sub-let the premises to a third party.
19. Further, that the intended Tenant had already forwarded payments in readiness to occupy the demised suit property.

C. List of Issues for Determination

20. I have considered one issue for determination which, if determined shall address the others;
 - a. Whether there exists a controlled tenancy between the Parties.

D. Analysis and Findings

Whether there exists a controlled tenancy between the Parties.

21. The Tenant approached the Tribunal by way of a Reference dated 4th July 2023 in opposition to the Landlady's action of seeking to evict him from the suit premises.
22. The Landlord in their Replying Affidavit dated 18th July 2023 stated that there was no tenancy agreement in place as the one in existence had lapsed on the 31st May 2023 between them and on Mr. Peter Mungai. She expressed that she had issued a notice non-renewal of the lease upon expiry.
23. She equally noted that the Tenant herein made a request for extension of time to allow him to vacate the premises. Owing to the nature of the goods in the storage facility, she agreed and the tenant made payments of KShs. 200,000/= as storage fees for the month of June.
24. The issue of outstanding arrears was brought up by the Tenant is that there exists an oral tenancy agreement between himself and the Landlord, which necessitated the payment of KShs. 200,00=.
25. It is not in question that the lease agreement between the Landlord herein and Mr. Peter Mungai had automatically terminated as it was set to run for a period of Five years until 31st May 2023 and that this automatically terminated the sub-letting agreement.
26. With this in mind, I am forced to consider whether there exists an oral agreement between the parties herein as alleged by the Tenant.
27. I have considered the provisions of Cap 301 in terms of the description of a tenancy as reproduced hereunder;

“tenancy” means a tenancy created by a lease or under lease, by an agreement for a lease or under lease by a tenancy agreement or by operation of law, and includes a sub-tenancy but does not include any relationship between a mortgagor and mortgagee as such;
28. The Landlord, produced copy of MPESA messages showing that he refunded the amount sent to him by the Tenant purporting to be a payment of the rent for the Month of July.



29. It was the Landlords averment that he did not wish to renew the Tenancy by issuing a notice to terminate tenancy to Mr. Peter Mungai whom the Tenant herein purported to sub-let from.
30. I have carefully analyzed the parties' submissions and all documents filed in this Tribunal. It is apparent that there is no evidence showing a tenancy agreement as established above. In *Republic v Chairperson - Business Premises Rent Tribunal at Nairobi & another Ex-Parte Suraj Housing & Properties Limited & 2 others* [2016] eKLR, the Judge cited with approval the case of *Pritam vs. Ratilal and Another* Nairobi HCCC No. 1499 of 1970 [1972] EA 560 where it was stated as follows:
- “Therefore the existence of the relationship of landlord and tenant is a pre-requisite to the application of the Act and where such relationship does not exist or it has come to or been brought to an end, the provisions of the Act will not apply. The applicability of the Act is a condition precedent to the exercise of jurisdiction by a Tribunal; otherwise the Tribunal will have no jurisdiction. There must be a controlled tenancy as defined in section 2 to which the provisions of the Act can be made to apply. Outside it, the Tribunal has no jurisdiction.”
31. With the above analysis, it is my finding that there exists no tenancy between the parties, whether controlled or otherwise, but a simple permission by the Landlord for the tenant to use the property for one month only, June 2023, in view of which I am restrained not to further consider the other issues raised by the Tenant.

E. Orders

- a. The upshot is that, the Applicant's reference dated 4th July 2023 and Notice of Motion Application of even date are hereby dismissed.
- b. The Tenant shall pay the agreed storage charges of Kshs. 200,000/= per month from the month of June until vacant possession is granted to the Landlords.
- c. In default, the Landlords are at liberty to proceed to levy for distress of the rent.
- d. The Tenant shall additionally hand over vacant possession of the premises to the Landlords on or before 31st December 2023 failure to which the Landlords shall be at liberty to break in and enter with the assistance of OCS Ruaka Police Station or any other Police station close by.
- e. This Ruling settles the Reference.
- f. Costs are awarded to the Landlord.

HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by Hon P. Kitur this 1st day of December 2023 in the presence of Ms. Bala holding brief for Ms. Mbugua for the Tenants and Ms. Musau for the Landlady.

