



**Ngugi v Kasngara & 2 others (Tribunal Case E105 of 2023)
[2023] KEBPRT 427 (KLR) (1 August 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 427 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E105 OF 2023
A MUMA, MEMBER
AUGUST 1, 2023**

BETWEEN

PETER NGUGI APPLICANT

AND

LAWRENCE NJAGIRU KASNGARA 1ST RESPONDENT

BONIFACE KIRUTHI KABURU 2ND RESPONDENT

DUNCAN KANYANJUA NDIRANGU 3RD RESPONDENT

RULING

A. Parties And Representatives

1. The Applicant Peter Ngugi is the Tenant and rented space from the Respondents on the suit property located on Eldoret/Municipality/Block 7/19 Shop No B3 Olive City Mall situated along Kenyatta Street. (hereinafter known as the 'tenant')
2. The firm of M/S Muhatia Pala & Associates represent the tenant/applicant in this matter.
3. The 2nd Respondent Boniface Kiruthi Kaburu is the Managing Director/ registered owner of the suit property of the Suit property and hence the Landlord. (hereinafter known as the 'Landlord')
4. The 1st and the 3rd Respondents are the business partners of the 2nd Respondent who developed and assist in the management of the suit property.
5. The firm of M/S Oduor Munyua & Gerald Attorneys at Law LLP represent the Landlord/ Respondent in this matter.



B. The Dispute Background

6. The landlord issued the tenant with a Notice to Terminate tenancy dated September 30, 2022 which was to take effect on January 1, 2023. The grounds upon which the landlord sought to terminate the tenancy was that the Tenant was creating a nuisance and failure to adhere to the tenancy rules and assaulting one of the landlords.
7. The Tenant in opposition to the said Notice has filed a Reference and a Notice of Motion Application dated October 12, 2022 under sections 6 & 12 of the [Landlords and Tenants \(Shops, Hotels and Catering\) Establishments Act](#) Cap 301. The Tenant was seeking orders that the landlord be restrained from terminating the tenancy pending the hearing and determination of the matter and that the Notice of Termination issued on September 30, 2022 be quashed and set aside.

C. Tenant's Claim

8. The Tenant has filed a Reference and a Notice of Motion Application dated October 12, 2022 seeking that the landlord be restrained from evicting them and that their Notice to Terminate Tenancy be quashed.

D. Landlord's Claim

9. The Landlord has filed a Replying Affidavit dated April 13, 2023 in which they affirm that they need to use the premises and as such require vacant possession.

E. List Of Issues For Determination

10. The issues raised for determination are as follows;
 - a. Whether the Termination Notice issued by the Landlord and the reasons advanced are valid?

F. Analysis And Findings

Whether the Termination Notice issued by the Landlord and the reasons advanced are valid?

11. The Tenant approached this tribunal by way of the reference dated October 12, 2022 seeking to oppose a Notice to Terminate tenancy that they had been issued with by the landlord.
12. The ground upon which the landlord sought to terminate the tenancy is that the Tenant was creating a nuisance and failure to adhere to the tenancy rules and assaulting one of the landlords.
13. 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.

14. 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



15. In the case of *Manaver N Alibhai T/A Diani Boutique vs 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.”

16. In this case the Landlord issued the tenant with a Notice to terminate tenancy on September 30, 2023 which was to take effect from January 1, 2023. Based on the above provision, the said notice was to take effect after two months which is as per the Provisions of CAP 301. As such the said notice can be deemed to be valid.
17. Having established that the Notice issued by the Landlord to the tenant was 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.
18. In this case the landlord's reason is that the Tenant has been creating nuisance and assaulted one of the landlords. In an attempt to prove his assertion, the landlord has attached a Charge Sheet dated September 28, 2022 in which he alleges that the tenant assaulted him.
19. The tenant in their application opposing the said Notice state that they took out a loan facility to enable them develop the premises and that the same was completed in May 2022. As such they have not been able to recover the amounts spent. I am of the opinion that more proof is required before upholding their eviction as per the landlord's Notice to avoid according an injustice to the tenant.
20. In light of the above I am unable to determine the truth of the assertions by the landlord at this point and to determine whether the tenant has actually been causing nuisance to the other parties as alleged. In any event a charge sheet is not proof of guilt a accused is innocent until proven guilty and that is a cardinal principle enshrined in our constitution article 50(2)(a)
21. I am of the opinion that the said claim for assault in a civil trial will call for a full *viva voce* hearing and a Site Visit to establish the situation and assertions by the landlord on the ground.
22. In light of the above I proceed to order as follows;

G. Orders

- a. The upshot is that the Tenant's Application dated October 12, 2022 is hereby partially allowed in the following terms;
- b. A site visit shall be conducted on the premises on August 18, 2023 at noon in the presence of all the parties.
- c. The reference shall be fixed for determination of the eviction upon submission of the report by the Inspector.
- d. Parties shall put in witness statements in 14 days each, the landlord shall commence.



e. The matter shall be fixed for hearing on September 20, 2023.

f. Costs shall be in the Cause.

HON A. MUMA

MEMBER / Ag Chair

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Ruling dated, signed and delivered virtually by Hon A. Muma this 1st day of August 2023 in the presence of Kiptoo for the tenant and in the presence of Oduor for the landlord.

HON A. MUMA

MEMBER/Ag Chair

BUSINESS PREMISES RENT TRIBUNAL

