



**Mbaria v Mbaria & 2 others (Tribunal Case E299 of 2023)
[2023] KEBPRT 1313 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1313 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E299 OF 2023
CN MUGAMBI, CHAIR
JULY 28, 2023**

BETWEEN

TERESA WANJIRU MBARIA TENANT

AND

JAMES MICHINA MBARIA 1ST LANDLORD

ANTONIO GITAU MBARIA 2ND LANDLORD

JACKSON MUCHINA MBARIA 3RD LANDLORD

RULING

Introduction

1. The tenant's application dated 21.3.2023 seeks orders that the landlord's/Respondent's be prohibited by an order of the Tribunal from interfering with the tenant's peaceful occupation of all that property at Eastleigh known as No. 36/VII/1023, Shop No. 13 and 14 [hereinafter the suit premises] pending the hearing of the reference. The Applicant has also sought the assistance of the OCS, Eastleigh police station in ensuring compliance with the orders sought.

The Tenant's depositions

2. The Tenant's affidavit in support of her application may be summarized as follows:
 - a. That the tenant occupies shop Nos. 13 and 14 in the suit property paying a monthly rent of Kshs. 20,000/=.
 - b. That in March 2023, the tenant renovated the suit premises and it was then that the Respondents demanded that he pays the rent of Kshs. 45,000/= for shop No. 13 and a sum yet to be determined for shop No. 14.



- c. That the tenant has also been managing the suit premises as it is a family property until 21.3.2023 when the Respondents wrote to the tenants informing them of an intention to change the management.
- d. That on 17.3.2023, the tenant received a verbal order to pay Kshs. 45,000/= for shop No. 13 or vacate.
- e. That the tenant does not owe the Respondent any rent arrears neither has she received a proper notice to terminate the tenancy.
- f. That when the tenant took over the premises, the previous tenant was paying Kshs. 20,000/= and Kshs. 15,000/= respectively and the tenant would like to continue paying the same amounts.

The Respondent's depositions

- 3. The Respondent's affidavit sworn by Mr. James Muchina Mbaria may be summarized as follows:-
 - a. That the suit property is absolutely owned by the Respondents having been transferred to them on 19.12.2019 and a title thereof issued formally.
 - b. That the suit property was transferred to the Respondents by their father.
 - c. That the tenant started residing in the suit property in the year 2019 as a care taker and management agent and she still occupies a residential premises there, rent free.
 - d. That trouble started when the tenant decided to demolish the wall that separates shop No. 13 and 14 without the consent of the Respondents with the intention of merging the two shops into one.
 - e. That the activities of the tenant led to the termination of her management services in the suit premises.
 - f. That the tenant without consultation has been paying Kshs. 20,000/= for shop No. 13 while the other tenants have been paying Kshs. 45,000/=.
 - g. That the Respondents expect the tenant to pay Kshs. 20,000/= for shop No. 14 in line with the market rates.
 - h. That the tenant is expected to pay her monthly rent.
 - i. That no notice of termination has been issued to the Applicant.

Analysis and determination

- 4. The only issue that arises for determination in this application is whether the Applicant is entitled to the orders sought in her application.
- 5. The dispute seems to revolve around whether the tenant ought to pay Kshs. 45,000/= or Kshs. 20,000/= for the shop No. 13 and what rent ought to be paid for shop No. 14.
- 6. The Respondents have admitted that the tenant pays Kshs. 20,000/= for shop No. 13 while the other tenants pay Kshs. 45,000/=. Under Section 4(2) of [Cap 301](#), it is clear that if the Respondents are desirous of increasing the rent, which amounts to reviewing the terms of the tenancy, then the Respondents are under an obligation to issue the necessary notice to the tenant. This the Respondents have not done and they can therefore not increase the rent for shop No. 13.



7. As regards shop No. 14, the tenant has deponed that the previous tenants paid the monthly rent of Kshs. 15,000/= and the tenant is desirous of continuing to pay the same rent. The Respondents on their part have deponed that they as a matter of course expect the tenant to pay Kshs. 20,000/= per month for shop No. 14. It would appear from the Respondents affidavit that the tenant took over shop No. 14 without the consent of the Respondents. It would also appear from the Respondents affidavit that the tenant has never paid any rent for shop No. 14, in which circumstances, I do not think any tenancy relationship exists between the parties for shop No. 14. What is clear is that the parties have not agreed on the rent payable for shop No. 14. The Tribunal cannot decide for the parties what rent ought to be charged as it is a matter of agreement in the first instance.
8. In the circumstances, if the tenant is not agreeable to the terms set out by the Respondents in regard to shop No. 14 then the tenant has no choice but to surrender the same to the Respondents.

Disposition

9. In view of the above findings, the orders which commend themselves to me and which I hereby make are the following:-
 - a. That the Respondents are enjoined from illegally increasing the rent for shop No. 13 from Kshs. 20,000/= to any other amount.
 - b. That as regards shop No. 14, there does not exist any tenancy relationship between the parties.
 - c. Parties are at liberty to negotiate terms for shop No. 14 failing which the tenant will have to surrender the said shop to the Respondents.
 - d. The Respondents are enjoined from evicting the tenant from shop No. 13.
 - e. The tenant's complaint dated 21.3.2023 is determined in terms of the orders above and this matter marked as closed.
 - f. Each party will bear their own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF JULY 2023

HON. CYPRIAN MUGAMBI CHAIRPERSON

28. 7.2023

In the absence of the parties.

