



**Musivogi v Okumu (Tribunal Case E162 of 2024)
[2024] KEBPRT 1630 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1630 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E162 OF 2024
CN MUGAMBI, CHAIR
OCTOBER 23, 2024**

BETWEEN

SYLVIA WANJIRU MUSIVOGI TENANT

AND

ROBERT JOHN OKUMU LANDLORD

RULING

Introduction

1. The Landlord's notice to terminate tenancy is the one dated 5.9.2024 and is brought on the grounds;

"That the Tenant has refused to pay rent, she has rent arrears of Kshs. 60,000/=. Efforts to recover the arrears has (sic) failed, I also want to do major renovations to the business premises. I request the rent Tribunal court and OCS Busia police station to order the Tenant to pay all rent arrears and vacate the business premises (sic) renovations to start."
2. The Tenant while opposing the notice to terminate her tenancy filed a Reference to the Tribunal under Section 6(1) of Cap 301 on 10.9.2024.
3. On 30.9.2024, at the request of the Counsel for the Landlord, the court ordered that the matter would proceed by way of written submissions.
4. Both parties have filed their submissions.

The Tenant's depositions in opposing the Notice to Terminate her Tenancy dated 9.9.2024
5. The Tenant's affidavits sworn on 26.9.2024, and 3.10.2024, may be summarized as follows;-
 - a. That initially, the Tenant was the Tenant of Kennedy Ochola, and later Paul Ochola Omondi.



- b. That by a notice served on the Tenant on 5.8.2024, Counsel for the Landlord informed the Tenant that the suit premises had changed ownership from Paul Ochola Omondi to the current Landlord.
- c. That the Tenant was also served with a notice dated 6.8.2024 to vacate the suit premises but which notice has since been withdrawn by the Landlord's letter dated 30.8.2024.
- d. That on 6.9.2024, the Tenant was served with another notice dated 5.9.2024 seeking to terminate her tenancy and alleging that she was in rent arrears amounting to Kshs. 60,000/=; which rent arrears the Tenant denies owing.
- e. That the Tenant does not have any rent arrears with her former Landlords.
- f. That the notice to terminate tenancy is not specific on the months that the rent is alleged not to have been paid.
- g. That the Tenant has been paying a monthly rent of Kshs. 7,500/=.
- h. That if the Landlord herein acquired the suit premises in June 2024, he ought to have notified the Tenant so that rent could be paid directly to him.
- i. That there being no notice, the Tenant kept on paying her rent to Kennedy Ochola.
- j. That the Tenant has not paid rent for August 2024 due to the notice to vacate served upon her by the Landlord.
- k. That the Tenant does not object to vacating the premises but only demands that she be compensated for the renovations that she has done on the suit premises.
- l. That the Tenant is ready to vacate the suit premises but only requires the court to assist her recoup her investment in the suit premises.
- m. That the Landlord has continued to harass the Tenant during the pendency of this suit by amongst other things, closing and blocking the toilet.

The Landlord's depositions

- 6. The Replying affidavit sworn by the Landlord on 20.9.2024 may be summarized as follows;-
 - a. That on 26.6.2024, the Landlord purchased the suit premises from its previous owners.
 - b. That the premises is long overdue for renovations.
 - c. That the Landlord has acquired a loan from Co-operative Bank to carry out the renovations he intends to do on the premises.
 - d. That the Tenant has not paid any rent to the Landlord since the Landlord took over the suit premises.
 - e. That the Landlord desires that the Tenant pays the rent from August 2024 till the termination of the tenancy.
 - f. That the Landlord was not a party to any agreement that the Tenant would renovate the suit premises.
 - g. That no compensation for good will arises in the circumstances of this case.



Analysis and determination

7. The Tenant has clearly indicated that she does not intend to resist the notice to terminate her tenancy save that she implores the court to assist her recoup her investment in the suit premises. The Landlord on his part seeks that the Tenant be ordered to pay rent from the month of August 2024 till the termination of the tenancy. The issues that arise for determination therefore are the following:-
 - a. Whether the Tenant is entitled to compensation for the alleged renovations in the suit premises upon the termination of her tenancy?
 - b. Whether the Landlord is entitled to payment of rent from the Tenant from the month of August 2024.
 - c. What orders ought to be made in the circumstances to dispose of this Reference.

Issue A: Whether the Tenant is entitled to compensation for the alleged renovations in the suit premises upon the termination of her tenancy?

8. The Tenant in her affidavit sworn on 26.9.2024 has deponed that she renovated the premises by Welding doors, iron sheets, ceiling boards and tiling the premises both inside and on the verandah. I have seen the document annexed to the Tenant's affidavit as "SMN 3d" which shows the cost of tiles, plastic strips, cement, steel door and labour to be Kshs. 70,550/=. The said document is handwritten and it is neither an invoice nor a receipt and is therefore of no evidentiary value. The receipts marked "SWM 3f" are not legible and it is not possible to tell what they were in payment of. The receipt marked as "SWM 3g" for Kshs. 18,250/= comprises of labour for the sum of Kshs. 7,500/=. The receipt is not clear what the said labour was expended for and for what purposes the other items in the said receipt were meant for.
9. It would also appear that the alleged renovations were carried out before the Landlord herein purchased the suit premises. I doubt whether it would be prudent to burden the Landlord with such compensation to the Tenant when the Tenant has not even shown that she had the consent of the previous Landlords to renovate the suit premises.

Under Section 12(1)(L) of Cap 301, the Tribunal has power,

"To award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill and improvements carried out by the tenant with the Landlord's consent."

10. Even if the Tenant truly carried out any renovations in the suit premises, she has not demonstrated that she had the consent of the Landlord to carry out such renovations in the absence of which consent, I am unable to make any orders against the Landlord compelling him to compensate the Tenant.

Issue B: Whether the Landlord is entitled to payment of rent from the Tenant from the month of August 2024.

11. The Tenant admits that she has not paid any rent to the Landlord since August 2024. The Landlord is of the same view as he only demands that the Tenant pays rent from August 2024. The only point of departure is the monthly rent payable. The Tenant has stated in his affidavit that she paid to the previous Landlords the rent of Kshs. 7,500/= per month. The Landlord's claim that the rent payable is Kshs. 15,000/= per month is baseless as indeed the Landlord has never received any rent from the



Tenant. It is also clear from the Tenant's Mpesa statements that she was paying the rent of Kshs. 7,500/= per month and I so find.

On this issue, I therefore do find that the Tenant owes the Landlord rent from the month of August 2024.

Issue C: What orders ought to be made in the circumstances to dispose of this Reference

12. On the basis of the foregoing findings, I will make the following orders in disposing of this Reference:
- a. The termination notice dated 5.9.2024 is approved subject to the alterations in order (b) hereinbelow.
 - b. The Tenant shall render vacant possession of the premises on or before 30.11.2024, FAILING which, the Landlord will be at liberty to evict the Tenant using a licensed auctioneer.
 - c. The Tenant will pay rent to the Landlord at the monthly rate of Kshs. 7,500/= from the month of August 2024 to November 2024, or to any other earlier date that the Tenant may opt to vacate the suit premises.
 - d. The Tenant's prayer for compensation on account of renovations is dismissed.
 - e. The Tenant will bear the costs of this Reference.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23RD DAY OF OCTOBER, 2024.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Juma for the Landlord and Ms. Achola for the Tenant

