



**Chepkosi v Njambi (Tribunal Case E551 of 2023)
[2023] KEBPRT 652 (KLR) (27 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 652 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E551 OF 2023**

A MUMA, AG. CHAIR

OCTOBER 27, 2023

**THE UPSHOT IS THAT THE TENANT'S REFERENCE AND NOTICE OF MOTION
APPLICATION DATED 30TH MAY 2023 IS ALLOWED IN THE FOLLOWING TERMS:**

**A. THE LANDLADY'S PRELIMINARY OBJECTION
DATED 14TH JUNE 2023 IS HEREBY DISMISSED.**

**B. THE LANDLADY'S NOTICE OF ALTERATION OF TERMS DATED 6TH SEPTEMBER
2022 AND THE NOTICE OF TERMINATION DATED 23RDFEBRUARY 2023 ARE INVALID.**

**C. THE TENANT TO REMAIN IN THE PREMISES AND
CONTINUE TO PAY RENT AS AND WHEN IT FALLS DUE AND
TO ENTER INTO A FORMAL LEASE WITH THE LANDLADY.**

D. LANDLADY AT LIBERTY TO ISSUE FRESH AND PROPER NOTICE TO THE TENANT.

E. EACH PARTY TO BEAR ITS OWN COSTS.

BETWEEN

MICHAEL WANJALA CHEPKOSI APPLICANT

AND

VERA NJAMBI RESPONDENT

RULING

A. Parties & Their Representatives

1. The Applicant, Michael Wanjala Chepkosi (hereinafter "the tenant"), is the tenant occupying the suit premises, Nyakiongo Building, erected on Land Reference No 209/231/9 located at Nairobi, the subject matter of the present suit.
2. The firm of M/S Kerongo Bosire & Company Advocates represents the tenant in these proceedings.



3. The Respondent, Vera Njambi, (hereinafter “the landlady”) herein is the Landlady, Nyakiongo Building, erected on Land Reference No 209/231/9 located at Nairobi, the subject matter of the present suit.
4. The firm of M/S Howard & Kenneth Advocates represents the Landlady in this matter. (howard@hlaw.co.ke)

B. Dispute Background

5. On 30th May 2023, the Tenant filed a reference and an application seeking orders certifying the matter urgent, and restraining the landlady from evicting, harassing intimidating and in any way interfering with his quiet possession and peaceful enjoyment of the suit premises pending the hearing and determination of the Reference and the Application.
6. The Tenant also sought orders invalidating the notice of eviction and the notice of rent increment and orders as to costs of the reference and the Application.
7. The Court, having considered the Tenant’s reference and Application, issued interim orders dated 6th June 2023 directing that the tenant’s Application be served for inter partes hearing on 15th June 2023.
8. In response to the Tenant’s Reference and Application, the Landlady filed a Notice of Preliminary Objection dated 14th June 2023.

C. Claim And Defence

9. In the Reference dated 30th May 2023 and the Application of even date, the Tenant claims that he has been in occupation of the suit premises for a period of 10 years for which he has been paying rent at a monthly rate of Kshs 80,000.00 payable on or before the 5th day of every month.
10. It is the tenant’s case that on 6th September 2022, the landlady through her Advocate issued a notice of increment of rent from Kshs 80,000.00 to Kshs 157,992.00. The said notice was accompanied by a lease agreement which he was expected to sign if agreeable to the terms therein.
11. Further, on 28th February 2023, the landlady issued the tenant with an eviction notice with an effective date of 1st April 2023. The tenant’s efforts to negotiate with the landlady on the rent increment bore no fruits as the landlady demanded that I sign the agreement and pay the revised exorbitant rent.
12. In her preliminary Objection dated 14th June 2023, the landlady challenges the jurisdiction of this Court as there is no tenancy relationship between her and the tenant and that the tenant lacks locus standi to act for the estate of the late Martin Chepkosi for the reason that he has not obtained grant ad litem in line with Section 54 of the [Law of Succession Act](#), Cap 160.

D. Issues For Determination

13. I have carefully analyzed all the Pleadings filed and the relevant evidence adduced before honorable Court. I considerably find that the issues that fall for determination are:
 - i. Whether this Court has jurisdiction to hear and determine this matter
 - ii. Whether the notice of rent increment and the notice to vacate are valid



E. Analysis Of The Law

i. Whether this Court has jurisdiction to hear and determine this matter

14. Jurisdiction is everything and once it is challenged, a determination thereon should be made before the Tribunal can proceed further with the disposal of any matter thereto. Where want of jurisdiction is demonstrated not to exist, the Tribunal has no option but to down its tools and proceed no further.
15. The landlady, through a notice of preliminary objection dated 14th June 2023 challenged the jurisdiction of this Tribunal to hear and determine this matter on the ground that there was no tenancy relationship between her and the tenant. It therefore behooves this Tribunal to make its determination on the issue before it proceeds further. To make this determination, I will make my findings on whether there is a tenancy agreement between the parties herein.
16. It is not in dispute that there existed a tenancy relationship between the Landlady's grandfather and Ukwala Coffins owned by the tenant's father. However, it is evident that upon the death of his father, the tenant continued to be in occupation of the suit premises, run the business and pay rent to the landlady. Copies of bank receipts filed by the tenant demonstrate that the landlady in deed received rent and even issued receipts for the said payments.
17. This created a controlled tenancy relationship within the meaning of Section 2 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Cap 301 Laws of Kenya. In the circumstances I find that there exists a controlled tenancy relationship and therefore, this matter falls within the jurisdiction of this Court with the tenant being a proper party to these proceedings.

Whether the notice of rent increment and the notice to vacate are valid

18. Termination or alteration of terms of controlled tenancies is regulated by Section 4 of the [Landlord and Tenant \(Shops, Hotels & Catering Establishments\)](#) Cap 301 Laws of Kenya.
19. The two requirements therefore for a valid notice of termination or alteration of terms of the tenancy is first, that the notice shall be in the prescribed form and secondly, that the notice shall not take effect until after expiry of two months, or such notice period as may be agreed by the parties.
20. Based on the evidence tendered before this Honorable Court, the notice of rent increment was issued by the Landlord on 6th September 2022, and required the Tenant to comply with the new monthly rent with an effective date of 5th December 2022.
21. Additionally, according to Section 4(2) mentioned above, the notice of alteration of terms of tenancy should be the prescribed form, specifically Form A, as provided for in the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) \(Tribunal\) \(Forms and Procedure\) Regulations, 1966](#).
22. The Landlady's notice of alteration of the terms of the tenancy was in the form of a letter to the Tenant, dated 6th September 2022 and not in Form A as prescribed by the Act. The notice of termination of the tenancy herein therefore fell short of the requirement of the Act with regard to being in the prescribed form.



23. Accordingly, I am guided by Section 72 of the *Interpretation and General Provisions Act* Cap 2 Laws of Kenya, which permits deviation from the prescribed form where such deviation does not affect the substance of the instrument. The provision specifically states as follows:
- “Save as is otherwise expressly provided, whenever a form is prescribed by a written law, an instrument or document which purports to be in that form shall not be void by reason of a deviation therefrom which does not affect the substance of the instrument or document, or which is not calculated to mislead.”
24. According to Form A as provided in the Regulations above mentioned, the Landlord’s notice to terminate the terms of the Tenancy herein should have specified;
- a. The Landlord’s premises occupied by the Tenant;
 - b. The duration of the notice of terminating the tenancy and the date when the notice is to take effect;
 - c. The grounds for termination of the tenancy;
 - d. The requirement that the Tenant should within one month notify the Landlord in writing whether or not the Tenant agrees to comply with the notice as from the date of receipt of the notice.
25. Bearing in mind that the notice of termination of the tenancy by the Landlord dated 6th September 2022 was not in the prescribed form, it is evident that the failure to comply with the prescribed form affected the substance of the notice of alteration of terms of the tenancy, and it was as good as no notice having been issued.
26. Further, I note that the landlady issued an eviction notice vide a letter dated 28th February 2023. This notice was issued pursuant to Article 3 of the draft lease agreement that the tenant had failed to execute. It is my considered view that the terms of the draft lease can not be binding upon the tenant until such a time that the said lease agreement is duly executed by him and the landlady.
27. Besides, being a controlled tenancy, the eviction notice whose effect is to determine the tenancy relationship between the landlady and the tenant should have been in the prescribed form A as earlier discussed.
28. In the circumstances, I find that the two notices issued to the tenant by the landlady do not meet the legal threshold required under Section 4 of Cap 301 and therefore, are invalid.

Determination

29. The upshot is that the Tenant’s reference and Notice of Motion Application dated 30th May 2023 is allowed in the following terms:
- a. The landlady’s preliminary objection dated 14th June 2023 is hereby dismissed.
 - b. The Landlady’s notice of alteration of terms dated 6th September 2022 and the notice of termination dated 23rd February 2023 are invalid.
 - c. The tenant to remain in the premises and continue to pay rent as and when it falls due and to enter into a formal lease with the Landlady.
 - d. Landlady at liberty to issue fresh and proper notice to the tenant.



- e. Each party to bear its own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON. MUMA THIS 27TH DAY OF OCTOBER 2023 IN THE PRESENCE OF NDEGE FOR THE LANDLORD AND OBED HOLDING BRIEF FOR BOSIRE FOR THE TENANT.

HON A. MUMA

AG CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

