



**Grand Murraile Investments Limited v Maingey (On behalf of ACK Church Kwa Maingey)
(Tribunal Case E565 of 2023) [2023] KEBPRT 1323 (KLR) (14 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1323 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E565 OF 2023
CN MUGAMBI, CHAIR
SEPTEMBER 14, 2023**

BETWEEN

GRAND MURRAILE INVESTMENTS LIMITED TENANT

AND

**ANDREW KITILI MAINGEY (ON BEHALF OF ACK CHURCH KWA
MAINGEY) LANDLORD**

RULING

1. The tenant's application dated 30.6.2023 seeks orders that pending the hearing and determination of the application, the Respondent be restrained from in any way dealing with the premises measuring half an acre from the parcel of land known as LR No 1338/96 Machakos (hereinafter the suit premises). The Applicant has also sought orders restraining the Respondent from dismantling the structures in the suit premises, an order allowing the tenant access to the premises, an order for the valuation of the premises and an order for compensation to the tenant for the developments it has done on the suit premises.

The Tenant's depositions

2. The tenant's affidavit in support of the application may be summarized as follows:-
 - a. That the Respondent leased to the Applicant the suit premises for a period of two and half years from 1st June 2021 at an agreed monthly rent of Kshs 30,000/=.
 - b. That pursuant to the lease agreement, the tenant has paid to the Respondent a total of Kshs 353,050/=.
 - c. That in August 2022, the Respondent's Counsel wrote to the tenant requiring it to pay rent arrears of Kshs 283,543/= and requiring the tenant to leave the suit premises within seven days.



- d. That the only rent arrears the tenant concedes is Kshs 66,000/=.
- e. That the tenant has spent about Kshs 3,342,529/= in carrying out various developments and improvements upon the suit premises.
- f. That the Respondents continue to hold the tenant's properties while denying the tenant access to the premises.
- g. That the Respondent has removed or replaced the Applicant's property and equipment and leased out the premises with the Applicant's permanent and temporary structures thereon to individuals carrying on business as "The Vibes Car Wash."
- h. That the rent owed by the tenant to the Respondent cannot justify the seizure of the tenants properties.
- i. That the attempt by the Respondent to lease out the suit premises and terminate the tenancy is illegal and in breach of contract.
- j. That the tenant is apprehensive that the Respondent may sell the tenant's properties and maytenant's investments in the suit premises.
- k. That the Respondents have failed to compensate the tenant for developments on the premises and loss of future income.
- l. That the tenant did not opt to vacate the premises but it is the Respondents who denied the tenant access to the suit property.

The landlord's depositions

3. The Respondent's replying affidavit sworn by Mr. Andrew Kitili Maingey may be summarized as follows:-
 - a. That the tenant occupied a portion of the Respondent's premises (the suit premises) until August 2022 when it vacated the premises after falling into huge arrears.
 - b. That when the Applicant was served with a demand notice dated 24.8.2022, it opted to vacate the premises without settling the accumulated rent arrears.
 - c. That the tenant had sublet the premises to a sub-tenant who also vacated the premises.
 - d. That the tenant only had temporary structures on the premises and not permanent ones as alleged in his affidavit.
 - e. That the suit premises have been given up to another tenant who has already executed a lease with the Respondent.
 - f. That the tenant has not demonstrated that he was permitted by the local planning authorities to develop the suit premises.
 - g. That there are no assets owned by the tenant on the premises.
 - h. That the suit premises is no longer available for letting.
 - i. That the tenant having vacated the premises, the Tribunal no longer has jurisdiction to hear and determine this matter.



Analysis and determination

4. The issues that arise for determination in this application are the following in my view:-
- Whether the tenancy between the parties was a controlled tenancy? And if so,
 - Whether the tenancy between the parties was legally terminated.
 - Whether the tenant is entitled to the orders sought in his application.

Issue A

5. The lease agreement between the parties is for a term of two and half years. Needless to say, the lease agreement gives use to a controlled tenancy within the means of Section 2 of [Cap 301](#) where at Section 2(1)(h), a controlled tenancy is described as a tenancy which has been reduced into writing and is for a period not exceeding five years.

Issue B

6. The letter terminating the lease that the Applicant complains of is the one dated 24.8.2022. The said letter demanded rent from the tenant in the sum of Kshs 283,543/= and required the tenant to pay the same and move out of the premises. The letter further threatened to remove the tenant from the premises without further reference. The tenant has deposed in his affidavit that it was denied access to the suit premises in the month of August and that the Respondents continue to hold the tenant's property and equipment. The tenant has further deposed that the Respondent has given out the suit premises to a third party.
7. I have already found that the tenancy between the parties is a controlled tenancy. All controlled tenancies can only be terminated in compliance with the provisions of [Cap 301](#) and where relevant, Section 4(1) and 4(2) provides as follows:-
- 4(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall 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 the following provisions of this Act.
 - 4(2) 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 of service enjoyed by the tenant under such a tenancy shall give notice in that behalf to the tenant in the prescribed term.

8. The letter by the Counsel for the landlord/Respondent dated 24.8.2022 cannot be the notice to terminate tenancy contemplated under Section 4(2) of [Cap 301](#). It does not meet the strict formal requirements of a notice under Section 4(2), 4(4) and 4(5) of the Act, [Cap 301](#). I find the letter dated 24.8.2022 to be an invalid notice of law and of no consequence. On this issue, I therefore find that the termination of the lease by the landlord was illegal.

Issue C

9. It is common ground that the suit premises have been given out to a third party who is not a party to these proceedings. It is also common ground that the tenant is no longer in the suit premises. What is not agreed upon is whether the tenant voluntarily vacated the premises or whether he was denied



access to the said premises by the landlord. Suffice it to say the premises is now in the hands of a third party. That being the case, prayers 2, 3, 4 of the application have been overtaken by events and cannot be granted.

10. The tenant has deponed that his property and equipment were left in the suit premises and the Respondent has denied them access to the premises. It is in this regard that the tenant has prayed that the valuer be allowed access to the premises to value its properties. I do not think this is an idle prayer as the tenant would require the valuation to pursue its claim for compensation. In the circumstances of this case, I will allow the prayer for valuation of the tenant's properties still held by the landlord.
11. The tenant has also prayed that the Tribunal makes an order for its compensation for the structures and developments in the premises on the basis of the valuation report to be prepared by its valuers. I do not think any order for compensation can be made at this stage as there is no material before me to enable me to make such a decision.
12. The Tribunal has the power to award compensation for losses incurred by a tenant on termination of controlled tenancies. In this regard, Section 12(h) of [Cap 301](#) provides that the Tribunal shall have 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.”
13. It is therefore not enough for the landlord to illegally terminate a tenancy and seeking to benefit from the said illegality, allege that the Tribunal has no jurisdiction to hear the matter, the law does not contemplate a situation where party creates an illegal status and seeks to benefit from the same. To that extent, I do hold that; I have the jurisdiction to hear and determine prayer No 5 and 6 of the application.

Final disposition.

14. In the final analysis, I do make the following orders:
 - a. That the landlord shall grant access to the suit premises by a valuer or valuers appointed by the Tenant for the purposes of carrying out a valuation of the tenant's properties and developments on the suit premises.
 - b. That the landlord shall be at liberty to appoint its own valuer to carry out a valuation of the tenant's properties and developments in the suit premises.
 - c. That both the tenant's and the landlord's representatives to be present during the valuation and proper identification of the properties and developments which belong to the tenant.
 - d. That the valuation be carried out within Thirty (30) days from the date of this ruling.
 - e. That the matter will proceed for hearing of the reference on the issue of compensation due to the tenant.

RULNG DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF SEPTEMBER 2023.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

In the presence of;



Mr. Musyoka for the Tenant/Applicant

Ms. Mwikali for the Respondent/landlord

