



**Ondieki v Nyaboke; Moindi (Interested Party) (Tribunal Case 48 of 2013)
[2023] KEBPRT 190 (KLR) (Civ) (24 March 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 190 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE 48 OF 2013
A MUMA, VICE CHAIR
MARCH 24, 2023**

BETWEEN

ANNE ONDIEKI APPLICANT

AND

ANNE NYABOKE RESPONDENT

AND

ELIJAH NYAKUNDI MOINDI INTERESTED PARTY

JUDGMENT

A. Parties And Representatives

1. The applicant Anne Ondieki is the disputed landlady and owner of 1/3 of the suit property situated on LR No Kisii Municipality/Block II/66 (hereinafter known as the 'landlady')
2. The firm of Ms. Oguttu Mboya, Ochwal & Partners Advocates represent the landlady /applicant in this matter. oooadvocates@gmail.com
3. The respondent is the tenant and has been occupying space and carrying out business on the suit property situated on LR No . Kisii Municipality/Block II/66 (hereinafter known as the 'tenant')
4. The firm of Ms. G.M Nyambatti & Company Advocates represent the Tenant/Respondent in this matter.



B. The Dispute Background

5. The Landlord issued the tenant with a notice to terminate tenancy dated 10th May 2013. The grounds for the termination were that the landlady intended to carry out renovations on the portion of land that she owned and the same required her to acquire vacant possession.
6. The tenant in opposition of the said notice filed a reference and Notice of Motion Application dated 1st July 2013 under section 12(4) of the [Landlords and Tenants \(Shops, Hotels and Catering\) Establishments Act](#) Cap 301. The tenant was alleging that there did not exist a tenancy relationship between themselves and the landlady and as such the landlady could not terminate the tenancy.
7. The landlady in support of her case presented documents before this Tribunal contending that she purchased the property in January 2013.
8. The property was originally owned by three persons each owning 1/3 of the property; Sospeter Moindi Mokaya, Siro Mogaka and Johnson Matundura. The landlady alleges that upon the demise of Johnson Matundura the property devolved to Teresa Nyanchero Matundura. Teresa also passed away and the property devolved to Julius Moracha Matundura who then sold the property to the landlady herein.
9. The tenant on the other hand alleges that the landlady herein is not her landlady and instead, she pays rent to Sospeter Muindi, listed above as one of the owners.
10. The main issue for determination before this tribunal then remains whether there exists a Tenancy relationship between the parties herein which will then speak to the validity of the notice.

C. Jurisdiction

11. The Jurisdiction of this Tribunal is in dispute as the tenant alleges there exists no tenancy relationship between the parties.

D. List Of Issues For Determination

12. The issues raised for determination are as follows;
 - a. Whether there exists a tenancy relationship between the parties herein?
 - b. Whether the notice to terminate tenancy issued by the landlord is valid?

E. Analysis And Findings

Whether there exists a tenancy relationship between the parties herein?

13. The [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act Chapter](#) 301 Laws of Kenya Act at section 12 (4) provides as follows;

In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit.

14. Section 2 (1) of [CAP 301](#) then defines a Controlled Tenancy as;

“Controlled tenancy” means a tenancy of a shop, hotel or catering establishment—

- (a) which has not been reduced into writing; or



- (b) which has been reduced into writing and which
 - (i) is for a period not exceeding five years; or
 - (ii) contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
 - (iii) relates to premises of a class specified under subsection (2) of this section
- 15. The above provisions accord the Tribunal powers to investigate any complaints relating to controlled tenancies and make orders as they deem fit.
- 16. In the present case there is a dispute between the parties as to whether there exists a controlled tenancy between them. The tribunal was moved to the site in Kisii where hearing was held leading to the ruling above, the Tribunal has sent an inspector to site before who also provided a report which led to the directions issued on 17th of August 2022.
- 17. The landlady has presented before the Tribunal that the suit property was originally owned by three persons through a tenancy in common where each of them owned 1/3 of the property. The three individuals included; Sospeter Moindi Mokaya, Siro Mogaka and Johnson Matundura.
- 18. The landlady has alleged that the property she claims to own was originally owned by the aforementioned Johnson Matundura. Upon his demise, as requires the rules of a tenancy in common, the property devolved to Teresa Nyanchero Matundura. Subsequently upon Teresa's demise the property devolved to Julius Moracha Matundura.
- 19. As per the agreement for sale annexed by the landlady and dated 31st January 2013 Julius Moracha Matundura sold 1/3 of the property known as LR No . Kisii Town/Block II/66 to Anne Ondieki the landlady herein. The authenticity of this document has not been put to question and as such clearly shows that Anne Ondieki is the owner of the said property. Additionally, the court in ELC 93 of 2014 held that the landlady is the rightful owner of the property and there is no proof that the same has been set aside.
- 20. The landlady has presented that at the point of sale of the property there were already existing tenants in the premises as pointed out by the inspector's report, the tenant herein being one of them. Being the owner of the property, the landlady avers that she has the right to collect rent from the existing tenant as well as to terminate the relationships if she so pleases which is why she proceeded to issue the tenant herein with the Notice to terminate tenancy.
- 21. I take note of the fact that the other tenants have since vacated during the subsistence of this suit and the tenant herein is the only one in the premises.
- 22. In opposition to the above the tenant alleges that her business is on the portion of land owned by the above-mentioned owner, Sospeter Muindi and not the landlady herein.
- 23. I made a Site visit to the premises on 8th December 2022. During the visit I was shown the respective portions of the property as belonged to the original owners. The landlady pointed out the portion that she acquired from Julius as well. I take note of the fact that the ownership of the portion of land by the landlady was not disputed.
- 24. It is also my observation that the tenant's business indeed falls within the portion of land that belongs to the landlady herein. As such the landlady is entitled to all the proceeds from the property as well as has the right to terminate the tenancy while following due procedure.



25. Having established that the landlady is indeed the owner of the property and further that the tenant had been paying rent to the previous landlord, I find that there indeed exists a tenancy relationship between the parties and that the notice to terminate tenancy was rightfully issued and was indeed valid since it accorded the tenant the required statutory two months period.
26. The Tribunal had previously given orders on 19th October 2021 that rent be deposited in a Joint Interest Account opened between the two advocates representing the parties herein. The same shall now be released to the landlady and the tenant shall continue paying directly to her as and when it falls due.
27. Owing to the foregoing I hereby proceed to order as follows;

F. Orders

- a. The upshot is that the Tenant's Reference dated 1st July 2013 is partially dismissed in the following terms:
- b. The Tenant shall pay rent to the Landlady as and when it falls due failure to which the landlady shall be at liberty to distress and evict in the event that they fail to agree with the tenant on the terms of her continuous stay in the next 30 days ie on or before 30th April 2023.
- c. All the amounts held under the Joint Interest Account as from 19th October 2021 shall be released to the landlady Anne ondieki immediately.
- d. OCS Kisii Central Police Station to assist in maintaining peace.
- e. The landlady shall have Costs.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 24TH DAY OF MARCH 2023 IN THE PRESENCE OF NYAMBATI FOR THE TENANT AND WAFULA FOR THE LANDLORD.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

