



**Mutwiri v Karianto & another (Tribunal Case E028 of 2024)
[2024] KEBPRT 1519 (KLR) (11 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1519 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E028 OF 2024
CN MUGAMBI, CHAIR
OCTOBER 11, 2024**

BETWEEN

MICHAEL MUTWIRI LANDLORD

AND

ELOSY KARIANTO 1ST TENANT

STANLEY MWIKA 2ND TENANT

RULING

1. The Landlord's Application dated 5.08.2024 seeks an order authorizing the Landlord to evict the Tenant and obtain vacant possession of the suit premises, Neema Shop situated on LR No. Meru/ Municipality Block 2/1035. The Landlord has also sought the costs of the Application.

The Landlord's depositions

2. The affidavit sworn by the Landlord on 5.08.2024 in support of his Application may be summarized as follows;-
 - a. That he is the Landlord of the suit premises located at Gakoromone market, Meru town.
 - b. That the Landlord issued a notice to terminate tenancy dated 6.05.2024 and which the Tenant has not responded to.
 - c. That the Landlord has sought to terminate the tenancy and obtain vacant possession in order to undertake repairs to resolve perennial sewerage leakages that are dangerous to the health and safety of market users and affect the hygiene of the goods stored and sold in the suit premises.
 - d. That the said notice was effective 1.08.2024 but the Tenant has continued to be in occupation of the premises to the prejudice of the Landlord.



The Tenant's depositions

3. The Tenant's replying affidavit sworn on 2.09.2024 may be summarized as follows;-
 - a. That she is a Tenant in the suit premises paying a monthly rent of Kshs. 10,000/=.
 - b. That in the year 2023, the houses in the suit premises were leaking, repairs were carried out and the houses have not leaked ever again.
 - c. That in March 2024, the Landlord issued the Tenants with another repair notice and when one of the Tenant's vacated, the Landlord leased the premises to another Tenant.
 - d. That the premises has over ten Tenants and it is only the Tenant herein who has been served with the notice.
 - e. That the Tenant believes that the Landlord is being malicious.
 - f. That the parties do not have a tenancy agreement but operate in good faith.
 - g. That the Tenant operates the business of a shop and mpesa and if she is evicted, she will suffer great loss and damage.
 - h. That for the Tenant to vacate the suit premises, she requires at least one year to vacate the premises.

Analysis and determination

4. The only issue that arises for determination is whether the Landlord/Applicant is entitled to the orders sought in his Application.
5. The Landlord's notice to terminate tenancy is the one dated 6.05.2024 with an effective date of 1.08.2024. I have seen the notice and it is a valid notice issued under the provisions of Section 4(2) of Cap 301.
6. The Tenant was required under the provisions of Section 6(1) of Cap 301 to file a Reference to the Tribunal if she was minded of opposing the Landlord's notice. The said Section provides as follows;-

“A receiving party who wishes to oppose a tenancy notice and who has notified the requiring party under Section 4(5) of this Act that he does not agree to comply with the tenancy notice may before the date upon which such notice is to take effect, refer the matter to a tribunal whereupon such notice shall be of no effect until and subject to the determination of the Reference by the Tribunal.”

7. The Tenant did not notify the Landlord that she did not agree to comply with the notice to terminate her tenancy neither did she refer the matter to the Tribunal. The consequence of this is that the notice to terminate tenancy became effective on the effective date shown in the said notice under the provisions of Section 10 of Cap 301 which provides as follows;-

“where a landlord has served a notice in accordance with the requirements of Section 4 of this Act on a Tenant, and the Tenant fails within the appropriate time to notify the landlord of his unwillingness to comply with such notice, or to refer the matter to a Tribunal, then subject to Section 6 of this Act, such notice shall have effect from the date therein specified



to terminate the tenancy or terminate or alter the terms and conditions thereof or the rights or services enjoyed thereunder.”

8. I note that the Tenant has filed a replying affidavit in response to the Landlord’s affidavit in support of his motion. In the absence of a Reference to the Tribunal by the Tenant in opposing the notice to terminate her tenancy under Section 6(1) of Cap 301, it is not open to the Tribunal to interrogate the merits or demerits of the notice to terminate tenancy, having regard to the provisions of Section 10 of Cap 301. I therefore find that the Landlord’s notice to terminate tenancy is unopposed and took effect on 1.08.2024.

Disposition

9. Following from the above findings, I do make the following orders in disposing of this matter;-
- a. The tenancy between the parties herein is hereby terminated.
 - b. The notice to terminate tenancy dated 6.05.2024 is hereby approved save for the condition in order (c) hereinbelow.
 - c. The Tenant shall render vacant possession of the premises known as Neema Shop situate on land parcel No. Meru/Municipality Block 2/1035 within the next thirty (30) days from the date of this Ruling.
 - d. That the Tenant failing to render vacant possession as ordered in (c) above, the Landlord will be at liberty to evict the Tenant from the suit premises using a licensed auctioneer.
 - e. That the Tenant will bear the costs of this suit.
 - f. File is ordered closed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY OF OCTOBER, 2024.

HON. CYPRIAN MUGAMBI - CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Muchiri – the Landlord and in the absence of the Tenant and Counsel

