



**Wothaya v Waikamba (Tribunal Case E612 of 2021) [2023] KEBPRT 251 (KLR)
(Commercial & Admiralty) (14 March 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 251 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
COMMERCIAL AND ADMIRALTY
TRIBUNAL CASE E612 OF 2021
A MUMA, VICE CHAIR
MARCH 14, 2023**

BETWEEN

HELLEN WOTHAYA APPLICANT

AND

DAVID MBURU WAIKAMBA RESPONDENT

RULING

A. Parties And Their Representatives

1. The Tenant occupies Plot No. 223/3 Land Ref. No 209 (LR No 209/223/3) located along Racecourse Road within Nairobi County (hereinafter the “suit premises”).
2. The firm of Waceke Thindigua & Co. Advocates represents the Tenant/Applicant in this matter (Email Address: loise@wacekelaw).
3. The Landlord/Respondent is the registered owner of the suit premises.
4. The firm of Maina Makome & Company Advocates represent the Landlord/Respondent in this matter (Email Address: info@mmakome.com)

B. The Dispute Background

5. The Landlord and Tenant entered into a lease agreement on February 23, 2012, for a duration of five years at a monthly rent payable as depicted below:

1/5/2012 – 30/4/2014 Kshs.50,000

1/5/2014 – 30/4/2015 Kshs.60,000

1/5/2015 – 30/4/2016 Kshs.65,000



1/5/2016 – 30/4/2017 KShs.70,000

6. The Landlord issued a termination notice upon the Tenant dated September 29, 2021, which notice was to take effect from December 1, 2021. The Landlord sought termination of the tenancy on account of rental arrears which had accumulated over a period of four years, amounting to KShs.2,462,000.
7. Consequently, the Tenant filed a Reference before this Tribunal dated October 26, 2021 opposing the Landlord's notice of termination of the tenancy.

C. Jurisdiction

8. The jurisdiction of this Tribunal is not in dispute.

D. The Tenants/applicants' Claim

9. The Tenant filed a Reference dated October 26, 2021 opposing the Landlord's notice of termination of the tenancy.
10. The Tenant filed a Notice of Motion application dated August 3, 2022 under Certificate of Urgency of even date, seeking that the Landlord be ordered to remove goons and the watchman stationed at the suit premises and allow the Tenant unconditional access to the suit premises, pending the hearing of the application herein.
11. The Tenant filed a Witness Statement dated October 24, 2022.
12. Further, Counsel for the Tenant filed a Notice of Motion application dated August 11, 2022 under Certificate of Urgency of even date.
13. The matter was fixed for hearing on February 10, 2023.

E. The Landlord's Claim

14. The Landlord filed a replying affidavit dated August 8, 2022 in response to the Tenant's application dated August 3, 2022.
15. Further, the Landlord filed submissions dated November 28, 2022.

F. Issues For Determination

16. The issue raised for determination before this Tribunal is whether the notice of termination dated September 29, 2021 was valid.

G. Analysis And Determination

Whether the notice of termination dated September 29, 2021 was valid

17. At the outset, I refer to section 4(4) (ii) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) which states as follows:

No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, as shall be specified therein: Provided that—

where the terms and conditions of a controlled tenancy provide for a period of notice exceeding two months, that period shall be substituted for the said period of two months after the receipt of the tenancy notice;



18. In the present matter, the lease agreement executed by the parties included a termination clause under Clause 3 which stipulated as follows:
- (3) The lease may be altered, renewed or terminated upon each party giving the other 3 months' notice
19. From the statutory provision as read with the contractual clause above, it is evident that the Landlord issued her with a three months' notice. Thus, the termination notice served upon the Tenant was valid in accordance with cap. 301 and the lease agreement. As such, the Tribunal holds that the termination notice dated September 29, 2021 is valid
20. Importantly, I find it necessary to look into the grounds on which the Landlord terminated the tenancy. The Landlord cited that the Tenant had failed to make rental payment over a period of four years, cumulating to Kshs.2,462,000.
21. On the contrary, the Tenant averred in her statement that she only owes the Landlord rental arrears amounting to Kshs.1,166,000 as at November 2022. She further stated that she paid Kshs.4,000,000 in goodwill to the Landlord when she took over the premises. Additionally, the Tenant averred in her statement that in 2019, she and the Landlord had verbally agreed that she pays 50% of the rent until December 2019 yet the Landlord had not reconciled the arrears to reflect the same.
22. This Tribunal takes note of its proceedings on April 22, 2022 whereby Counsel for the Landlord submitted that the Tenant made payments amounting to Kshs.450,000, reducing the rent arrears to KShs.1,996,000.00. Further, on September 22, 2022, Counsel for the Landlord further submitted that the Tenant had paid a further sum of KShs.100,000. Consequently, this Tribunal issued orders that the parties pursue negotiation and that the Tenant pays the current rent amount as at that time.
23. In view of the above, this Tribunal finds that despite the termination notice being valid, the Tenant's Reference opposing the said notice is hereby upheld, given that the parties agreed to pursue negotiation and the Tenant has been making efforts to settle the rental arrears and has even proposed to defray the arrears in instalments.

H. Orders

- a. This Tribunal makes the following orders. The upshot is that the Tenant's Reference dated October 26, 2021 and Application dated August 3, 2022 are hereby upheld on the following terms:
- b. The tenant shall pay an additional Kshs. 130,000.00 per month towards defraying of their arrears in addition to the Kshs. 70,000.00 for rent failure to which the Landlord shall be at liberty to distress for rent.
- c. The Tenant shall keep paying rent as and when it falls due failure to which the Landlord shall be at liberty to distress and take back vacant possession.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 14TH DAY OF MARCH 2023 IN THE PRESENCE OF WACEKE FOR THE TENANT AND MAINA FOR THE LANDLORD.

HON A. MUMA



VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

