



Camp Zodiac Africa Group Limited v Atieno & another (Tribunal Case E154 of 2022) [2023] KEBPRT 1202 (KLR) (Civ) (26 May 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1202 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E154 OF 2022
CN MUGAMBI, CHAIR
MAY 26, 2023**

BETWEEN

CAMP ZODIAC AFRICA GROUP LIMITED TENANT

AND

PENINA ATIENO 1ST LANDLORD

ANGELA AWUOR 2ND LANDLORD

RULING

1. The tenant's application dated 29.7.2022 seeks an order that the landlord be restrained from in any way interfering with the tenant's quiet possession of the tenancy premises on L.R. No. MN/112937 registered in the titles registry at Mombasa, as No. CR 26999/1 within Mtwapa, Kilifi county pending the hearing of the reference.
2. The application is supported by the affidavit of Joseph Okello Okeyo which I summarize as follows hereunder:-
 - a. That he is a director and the sole owner of the tenant having executed a lease agreement with the landlords on 13.7.2019.
 - b. That the landlords had had planned to develop the property into a two storey building but ran out of funds before they finished the ground level.
 - c. That the parties agreed at a monthly rent of Kshs. 40,000/= for thirty six (36) months after which the tenant would be given the first option to purchase the suit premises.
 - d. That it was further agreed that the tenant would renovate the premises to make it more habitable.



- e. That it was agreed that the tenant would be compensated for the improvements and the value of the property before the improvements was agreed at Kshs. 12,500,000/= which was captured in the lease agreement between the parties.
- f. That the tenant carried out renovations and built up the second storey and also constructed a restaurant at the roof top.
- g. That on 17.5.2022, the landlords Advocates issued the tenant with a notice to vacate the premises on the grounds that the tenant had not shown any interest to extend the lease that had already expired.
- h. That the tenant expressed his interest to extend the lease by his letter dated 19.5.2022.
- i. That the landlords issued another notice to the tenant dated 19.5.2022.
- j. That by a letter dated 24.5.2022, the landlords denied giving the tenant permission to renovate the premises.
- k. That the electricity bills complained of in the landlords letters dated 17.5.2022 and 24.5.2022 were paid and communication to that effect made to the landlords.
- l. That the valuation carried out by the tenant estimates the suit premises to be worth Kshs. 19,000,000/=:, meaning that the improvements by the tenant amount to Kshs. 6,500,000/=:.
- m. That should the landlords evict the tenant, they should compensate him for the improvements.
- n. That the landlords have not offered the tenant any legal document that would make it easy for the tenant to secure finance and purchase the suit premises.

The landlords depositions

3. The affidavit sworn by Penina Atieno Okul may be summarized as follows:-
 - a. That the Applicant's lease has expired and he is estopped from seeking a renewal of the same.
 - b. That it is not true that the property was run down when the tenant took it up.
 - c. That the tenant has claimed to have made improvements worth Kshs. 6,500,000/= without any approved plans and/or consent from the landlords.
 - d. That the Kshs. 6,500,000/= valuation is based on a valuation report by Ultimate Valuers Limited that the landlords did not authorize.
 - e. That the landlords did not authorize any renovations and/or improvements on the suit property.
 - f. That what the tenant calls improvements is a shed put on top of the building without the express written consent of the landlords.
 - g. That the tenant did not respond to the notice to terminate tenancy and this suit was filed after the expiry of the notice.
 - h. That at the time of coming to court, the tenant had rent arrears of Kshs. 100,000/=:.
 - i. That the tenant has dragged the Respondents to unnecessary litigation aimed at denying the landlords a chance to sell the property.



- j. That the landlords need to dispose of the property to take care of his illness.

Analysis and determination

4. The issues that arise for determination in this application are whether the tenant is entitled to the orders of injunction sought in the said application. The relief by the tenant has been sought pending the hearing of the reference. The reference brought under Section 12(4) of the Act, Cap 301 is brought on the grounds that the landlords have issued the tenant with two months' notice, that the landlords have refused to renew the lease and that the landlords have refused to compensate the tenant for the improvements done on the suit premises.
5. Pursuant to the reference, the tenant has prayed for orders that the landlords be enjoined from evicting him, and that the tenants be issued with a fresh lease as stipulated in the lease agreement of 13.7.2019. Alternatively, the tenant has prayed that he be issued with a proper notice, that the tenant be compensated for improvements in the sum of Kshs. 6,500,000/= and loss of business and be further compensated for appreciation in the value of the property following the improvements therein.
6. The lease agreement between the parties herein was to run for a period of thirty-six (36) months from 2.3.2019. The lease therefore expired sometimes around April 2022, before this action was filed. As things stand, the relationship between the parties is not governed by any written agreement, the earlier one having expired and is therefore a controlled tenancy.
7. There is evidence that the landlords continued to receive rent from the tenant after the expiry of the lease. The letter dated 19.5.2022 from Onyango Onunga & Company Advocates addressed to the landlords Advocates states at paragraph 1;

“...despite the lease having expired on March 2022, he has continued to pay rent for the months of April and May 2022 which were well received by your clients.”
8. That being the case, if the landlords were desirous of terminating the tenancy between themselves and the tenant as indeed they were, then they were obligated by the law to issue a notice to terminate tenancy under Section 4(2) of Cap 301 which provides as follows;-

“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 or service enjoyed by the tenant under such a tenancy shall give notice in that behalf to the tenant in the prescribed form.”
9. I have perused the notices by the landlords Advocates dated 17.5.2022, 24.5.2022 and do note that the three notices do not comply with the provisions of Section 4(2), 4(4) and 4(5) of Cap 301 and they are therefore invalid notices and of no effect. To this extent, I find the complaint by the tenant as regards the notices to be merited.
10. The tenant has stated in his affidavit that he carried out renovations on the suit premises estimated to have cost Kshs. 6,500,000/=. On this point, the landlords have denied consenting to the carrying out of any renovations in the suit premises. The tenant has annexed to his affidavit a valuation report commissioned by himself and the landlords challenged the said report on the basis that they did not consent to the valuation of their premises.

My view is that the issue of whether or not the tenant really developed and/or renovated the premises for the sum of Kshs. 6,500,000/=: whether or not the landlords consented to the said renovations and therefore whether or not the tenant is entitled to compensation for the alleged renovations, are matters that can only be dealt with at the full hearing of the reference.



11. I have noted that the landlords are desirous of selling the suit premises to meet pressing needs and indeed the tenant had been given the first option to purchase the property. But I must weigh this need against the interest of the tenant and the provisions of the law in regard to termination of tenancies.

Final disposition

12. I will in the circumstances allow the tenant's application in terms of prayer 3 and 4 thereof and further order that this matter be fixed for hearing of the reference on a priority basis.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF MAY 2023.

HON. CYPRIAN N. MUGAMBI

CHAIRPERSON

PARA 26.

5.2023

Delivered in the presence of Ms. Ogoti for the landlords

In the absence of the tenant and Counsel.

Matter be mentioned on 31.5.2023.

