



**Jennipher v Kiarie & 2 others (Tribunal Case E089 of 2024)
[2024] KEBPRT 1118 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1118 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E089 OF 2024
M MAKORI, MEMBER
JUNE 20, 2024**

BETWEEN

MAKYALI JENNIPHER APPLICANT

AND

MR. KIARIE 1ST RESPONDENT

ENEO CAPITAL 2ND RESPONDENT

EPHANTUS NJOROGE 3RD RESPONDENT

RULING

1. The Tenant approached this Tribunal vide Reference Dated 24th January 2024, the same was accompanied by a Notice of Motion Application brought under Certificate of Urgency.
2. In the said Reference, the tenant complains that the Landlord hired goons on the 19th of January 2024, who threw her tools of trade outside her business premises and threatened to evict the tenant contrary to the provisions of [Cap 301](#) Laws of Kenya.
3. In her Notice of Motion Application, the Tenant sought the following orders; -
 - I. Spent.
 - II. That the Respondents are hereby ordered to allow the Tenant unlimited access to her business premises without any hindrances pending hearing inter partes.
 - III. That the Respondents are hereby restrained from letting out the business premises to another Tenant pending hearing and determination of the Application inter partes.
 - IV. That the Respondents are hereby ordered to return/release the Tenant tools of trade he confiscated immediately and unconditionally pending hearing and determination of the case.



- V. That the Landlord, its servants, employees, Caretaker, agents be and is hereby restrained from unlawful intercepting/harassing, intimidating and/or closing, evicting or threatening/ interfering/tampering, increasing rent, demolishing, disconnecting electricity power supply, disposing by or in any manner whatsoever and or howsoever with the Applicant's quiet occupation and lawful enjoyment of suit premises at Kangemi pending hearing and determination of this case.
- VI. That the O.C.S Kangemi Police Station do assist in compliance of these orders.
- VII. That the Respondents are hereby ordered to compensate for all the goods and items maliciously damaged, carted away and to remedy or pay for any damaged, defects or loss of business to the Applicant/Tenant amounting to Kshs. 100,000/-.

That cost of this Application be provided for.

- 4. The Respondents filed a Replying Affidavit sworn by one Tabitha Wambui, the director of the 2nd Respondent who denies the contents of the Applicant's Supporting Affidavit and avers that the Tenant had sublet the property to the Applicant without the 2nd Respondent's approval. She avers that the 2nd Respondent then prepared a Tenancy Agreement and shared the same with the Applicant who refused and/or neglected to sign the Agreement thereby occasioning her eviction.
- 5. She further avers that the Tenant failed on several occasions to pay rent for the premises and the 2nd Respondent became apprehensive that it could not recover the rent arrears as the Applicant has refused to sign the Tenancy Agreement.
- 6. The 2nd Respondent further avers that the Applicant had perpetually failed to observe the safety standards of their neighbours by using the premises to carry out cooking without erecting a chimney and washing sinks which led to the premises becoming untidy, inhabitable and unhealthy despite receiving constant complaints from her neighbours to maintain cleanliness.
- 7. The Tenant filed a Supplementary Affidavit, where she avers that the Respondents have failed to comply with valid court orders, she further states that the termination notice by the Respondents is unmerited and an abuse of the court process and should be expunged from court proceedings and further urges this honourable tribunal to allow her application, complaint and claim of Kshs. 404,040. She proceeds to attach receipts and the police statement.
- 8. Both parties did not file their Submissions.
- 9. From the totality of the pleadings, the following issues arise for determination.
 - I. Whether the process of evicting the tenant was lawful?
 - II. Whether the Applicant is entitled to Kshs. 409,040 in damages?
 - III. Who pays the costs of this Application?
- 10. On whether the process of evicting the tenant was lawful? We look at the provisions of Section 4 of the Landlord And Tenant (shops, Hotels And Catering Establishments) Act CAP 301 of the laws of Kenya, which provides for the Termination of and alteration of terms and conditions in controlled tenancies as follows; -

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- (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.

(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 or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.

(3)

(4) 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—

(i) where notice is given of the termination of a controlled tenancy, the date of termination shall not be earlier than the earliest date on which, but for the provisions of this Act, the tenancy would have, or could have been, terminated;

(ii) 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;

(iii) the parties to the tenancy may agree in writing to any lesser period of notice.

(5) A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and requires the receiving party to notify the requesting party in writing, within one month after the date of receipt of the notice, whether or not he agrees to comply with the notice.

(6) A tenancy notice may be given to the receiving party by delivering it to him personally, or to an adult member of his family, or to any other servant residing within or employed in the premises concerned, or to his employer, or by sending it by prepaid registered post to his last known address, and any such notice shall be deemed to have been given on the date on which it was so delivered, or on the date of the postal receipt given by a person receiving the letter from the postal authorities, as the case may be.

11. The legal requirements for termination of tenancy is therefore that the Notice for termination should be in the prescribed form and the same should not be less than two months after the receipt thereof by the receiving party. I have looked at the pleadings filed by both parties together with all accompanying documents and I have not seen any Notice to terminate the tenancy. For this this reason, I find that the process of eviction of the tenant was not lawful.

12. As to whether the Tenant is owed Kshs. 409,040 in damages? We look at what the Evidence Act, Cap 80 Laws of Kenya says on the burden of proof. Sections

107. Burden of proof.

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.



108. Incidence of burden.
The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
109. Proof of particular fact.
The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person.
13. I have noted that the Tenant has claimed to incur losses and damages as a result the Respondent's lack of compliance to court orders. She has also provided copies of receipts amounting to Kshs. 73,040/- which she claims to have lost as a result of the illegal eviction by the Respondents. On the other hand, the 2nd Respondent claims that there was proper handling and movement of the Applicant's tools of work and no property was damaged as claimed.
14. It is my finding that if the property was not damaged as claimed, the Respondents will surely be able to return them to the Applicant in good condition.
15. Having considered the pleadings, the evidence and the arguments by the parties in this matter, I find that the Reference by the tenant is merited and proceed to make the following orders; -
1. That the Tenant's Reference and Notice of Motion Dated 24th January, 2024 is allowed.
 2. That the landlord, it's servants, employees, caretaker, agents are hereby restrained forthwith from unlawfully harassing, intimidating threatening/interfering/tampering in any manner whatsoever with the applicant's quiet occupation and lawful enjoyment of suit premises at Kangemi.
 3. That the Respondents are hereby ordered to immediately return/release all the goods belonging to the tenant, in the condition that they were in before being carted away, failure to which, the Respondents are ordered to pay the Tenant Kshs. 73,040/-.
 4. That upon compliance with order number 3 above, the Tenant is hereby ordered to pay the outstanding rent arrears.
 5. That the O.C.S Kangemi Police Station do assist in compliance of these orders.
 6. Each party shall bear their own costs of this Application.

HON. MIKE MAKORI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON MIKE MAKORI THIS 20TH JUNE, 2024 IN THE PRESENCE OF MAKYALI JENNIPHER THE APPLICANT AND IN THE ABSENCE OF THE RESPONDENTS.

HON. MIKE MAKORI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

