



**Yas Limited v Mr Moez Manji t/a Salon Glamour (Tribunal Case
E697 of 2024) [2024] KEBPRT 1484 (KLR) (14 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1484 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E697 OF 2024
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
OCTOBER 14, 2024**

BETWEEN

YAS LIMITED APPLICANT

AND

MR MOEZ MANJI T/A SALON GLAMOUR RESPONDENT

RULING

A. The Dispute Background

1. The landlord moved this Tribunal vide a reference dated 27th June 2024 under Section 12 (4) of Cap 301, Laws of Kenya seeking for an eviction order against the tenant and /or his agents from the suit premises known as Maissonette House No. 6 on L.R NO. 209/65/43, 10 Ojijo Road.
2. The landlord simultaneously filed a Notice of Motion of even date seeking for the same orders supported by the affidavit of Fatma Chandani. Among the documents relied upon by the landlord is a tenancy agreement dated 30th May 2023 through which the suit premises were let to the tenant for a period of one year commencing from 1st June 2023 and ending on 31st May 2024.
3. On 28th March 2024, the tenant was reminded in writing of the fast approaching date of expiry of his tenancy. The tenant requested for a grace period of three months from 31st May 2024 to 31st August 2024. He did not however pay rent after the said date and continued to remain silent. As such, the tenant is accused of remaining in the suit premises without the landlord's consent. It is for the said reason that the landlord moved to this Tribunal seeking for his eviction.
4. On being served with pleadings, the tenant filed a replying affidavit in which he deposes that he entered into a yearly tenancy agreement with the landlord in November 2017 when he purchased a Salon business as a going concern from one Komal Rajesh Bhatt at a consideration of Kshs 2,650,000/= (inclusive of goodwill). The purchase agreement is attached thereto as annexure MM1.

5. It is the tenant's contention that the landlord knew about the said purchase and agreed to allow him to conduct business without any hindrance and without entering into any lease agreement. The tenant deposes that he trusted the word of the landlord.
6. According to the tenant, the landlord issued an irregular termination letter indicating that the tenancy agreement would not be renewed. The said letter is marked as annexure MM4. The tenant did not agree with the notice and continued to pay rent with the last rent payment having been made on 26th July 2024 in terms of annexure MM5. The tenant deposes that the tenancy is controlled.
7. The tenant further deposes that he has a subtenant in the suit premises who pays him Kshs 32,000/= which he tops up to pay his monthly rent of Kshs 90,000/= to the landlord. The landlord is accused of wanting to retain the subtenant while opting to kick out the tenant. This according to the tenant is a manifestation of bad faith on the part of the landlord.
8. The tenant further deposes that he recently undertook renovation of the suit premises at a cost of Kshs 830,000/= in terms of annexure MM7.
9. The landlord filed a further affidavit sworn on 20th August 2024 by Fatma Chandani wherein she deposes that she was not a party to the purchase agreement entered into between the tenant and Komal Rajesh Bhat in respect of the Salon business. The tenant was introduced to her after entering into the agreement and they entered into the tenancy agreement like any other tenant in the suit premises.
10. According to the landlord, the tenant should have recouped his investment in the business having occupied the suit premises for the last 7 years. In any event, the landlord was not involved in the said business purchase transaction.
11. It is further deposed that the letter of 28th March 2024 was written out of courtesy to remind the tenant that his tenancy was coming to an end. He cannot continue occupying the premises without the landlord's consent when his lease had come to an end.
12. Although the tenant claims that he did not agree with the notice, he did not refer the matter to this Tribunal as he knew that everything was done according to law.
13. The landlord denies that she told the subtenant to remain in possession of the suit premises after the tenant herein vacates as the former was brought into the premises without her consent and in contravention of the tenancy agreement.
14. The landlord denies that the tenant has recently effected renovations of the suit premises as she has been visiting the same without noticing any such activities. The lease agreement at Clause 19 required the tenant to seek the landlord's consent before effecting any such renovations. No such consent was sought nor granted.
15. On 12th August 2024, this Tribunal directed that the matter be disposed of by way of written submissions but only the landlord complied. We shall consider the submissions while dealing with the issues for determination.

Issues For Determination

16. The following issues arise for determination;
 - a. Whether exists a tenancy relationship between the landlord and tenant.
 - b. Whether the landlord is entitled to vacant possession of the suit premises.

- c. Who bears the costs of the case?

Analysis & Determination

17. We intend to deal with the first two issues together and the last one separately.

Whether exists a tenancy relationship between the landlord and tenant & Whether the landlord is entitled to vacant possession of the suit premises.

18. There is no dispute that the parties herein entered into a tenancy agreement in which the landlord agreed to let and the tenant agreed to take on lease a Salon business situate in Maissonette House No. 6 on L.R NO. 209/65/43, 10 OJJO ROAD for one year with effect from 1st June 2023 to 31st May 2024.
19. Before the tenancy agreement came to an end, the landlord wrote a reminder to the tenant informing him that it was due to expire on 31st May 2023. The tenant however sought for a three (3) months grace period to vacate but did not pay any rent for the said period and instead remained silent and failed to vacate from the suit premises prompting the filing of this suit.
20. The landlord submits that even without the said reminder, the tenant knew that he was expected to vacate from the suit premises on or before 31st May 2024. As such, the letters of 28th March 2024 and 27th June 2024 were just reminders out of courtesy. The tenant had not requested for extension of the tenancy.
21. We note that the tenancy agreement dated 30th May 2023 between the parties herein was for a fixed period of one year beginning on 1st June, 2023 to 31st May 2024.
22. The letter dated 28th March, 2024 was written to inform the tenant that the landlord had no intentions to renew the tenancy and gave the tenant 60 days' notice to vacate the demised premises on or before 31st May, 2024. The tenant did not comply and instead requested for a grace period of three months to do so. Again, the tenant failed to vacate.
23. In the case of Dr Koisagat Tea Estate Ltd Vs Eritrea Orthodox Tewdo Church Ltd [2015] eKLR the court cited the Court of Appeal decision in National Bank of Kenya Ltd vs. Pipe Plastic Samkolit (K) Ltd (2002) 2 E.A. 503, (2011) eKLR the Court of Appeal at page 507 as follows: -
- “A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.”
24. In Adventure Adrenalin Africa Limited v Hellen Hartley [2021] eKLR, it was stated as follows;
- “
- “99. In the present case, the parties entered into a clear tenancy agreement of two years. The same has not been renewed and no vitiating factor has been cited to warrant a different interpretation of the contract. I am bound to enforce the said terms.”
100. In the case of Kasturi Limited Vs Nyeri Wholesalers Limited [2014] eKLR the Court of Appeal held as follows;
- “A Tenant cannot impose or force himself on a Landlord. In the instant case, when the lease between the parties expired, it was incumbent upon the Appellant to give vacant possession.”

25. Guided by the foregoing decisions, this Tribunal cannot extend the tenant's tenancy in the suit premises which was for a fixed term of one year. We cannot impose terms that are not contained in the said agreement by ordering payment of goodwill and improvements by the landlord who did not consent to the same.
26. In support of the foregoing conclusion, we rely on the Court of Appeal decision in *Agricultural Finance Corporation Vs Lengetia Limited & Another* (1985) eKLR, wherein it was held as follows;
- “As stated in Halsbury's Laws of England, 3rd Edition, Volume 8 at paragraph 110:
- “As a general rule, a contract affects only the parties to it, and cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it. The fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue upon the contract.”
27. We agree with the landlord's submissions that the letter dated 28th March, 2024 and the subsequent one dated 27th June 2024 were not termination notices but courtesy letters and there was no need to serve any notice in the prescribed form under Section 4(2) of Cap 301, Laws of Kenya in the circumstances of this case.
28. We therefore find and hold that the tenancy relationship between the Applicant and the Respondent terminated on 31st May 2024 and the landlord is entitled to possession of the suit premises in line with Section 12(1)(e) of Cap 301 which provides that the Tribunal shall have power; -
- “(e) to make orders, upon such terms and conditions as it thinks fit, for the recovery of possession and for the payment of arrears of rent and mesne profits, which orders may be applicable to any person, whether or not he is a tenant, being at any material time in occupation of the premises comprised in a controlled tenancy.”

Issue (c) Who bears the costs of the case?

29. In regard to costs, the same are always at the Tribunal's discretion under section 12(1)(k) of Cap. 301, Laws of Kenya but always follow the event unless for good reasons otherwise ordered. We have no reason to deny the landlord costs of the case.
30. Orders
31. In conclusion, the following final orders commend to us;
- a. The application and reference dated 27th June 2024 are allowed in terms of Prayers 1, 2 & 3 of the reference.
 - b. The tenant shall pay any further accrued mesne profits at the obtaining monthly rental rate until he vacates or is evicted therefrom.
 - c. The landlord's costs against the tenant are assessed at Kshs 25,000.
- It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF OCTOBER 2024.

HON. GAKUHI CHEGE - PANEL CHAIRPERSON

HON. JOYCE AKINYI OSODO - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

In the presence of:

Gachoka for landlord/Applicant

No appearance for the tenant