



**Kuria v Karanja & another (Tribunal Case E1142 of 2023)
[2023] KEBPRT 198 (KLR) (Civ) (17 March 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 198 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E1142 OF 2023
GAKUHI CHEGE, VICE CHAIR
MARCH 17, 2023**

BETWEEN

TERESIA NJERI KURIA APPLICANT

AND

JOHN MWANGI KARANJA 1ST RESPONDENT

LUCY NJOKI MWANGI 2ND RESPONDENT

RULING

1. The tenant moved this Tribunal through a complaint dated 2nd December 2022 under Section 12(4) of Cap. 301, Laws of Kenya claiming that the landlord had unlawfully locked her business premises by welding the door and window thereby denying her access.
2. She simultaneously filed a motion of even date under certificate of urgency seeking various reliefs including an order for reopening of the business premises unconditionally and in default, she be allowed to break the locks and gain access under supervision of the OCS Kabati Police Station pending hearing and determination of the case. This prayer was on 5th December 2022 granted together with the one for security and the application was fixed for hearing inter-partes on 3rd January 2023.
3. The tenant further prays for an order that the landlord allows her unlimited access to the business premises together with a restraining order from any form of interference with her quiet occupation and lawful enjoyment of the suit premises.
4. In her affidavit in support of the application, the tenant deposes that she entered into a tenancy agreement with the landlord through which she agreed to be paying Kshs.2000/- payable by 5th of every month in advance.



5. On 1st December 2022, the landlord locked the suit premises without legal notice or court order as can be seen on photographs marked “TNK1”. The applicant deposes that she has been a tenant in the suit premises since 2013 and purely relies on the said business.
6. The tenant deposes that the landlord was in breach of her rights and freedom guaranteed under Article 40 of the Constitution of Kenya, 2010 and it was in the best interest of justice to grant the orders sought.
7. The application is opposed through a replying affidavit of the 1st Landlord sworn on 14th December 2022 wherein it is deposed that there has never been a tenancy agreement between him and the Applicant to lease a business premises.
8. It is further deposed that the Applicant is in occupation of a residential house owned by the 1st Respondent within Kabati area, Muranga County consisting of one room. It is further deposed that there are shops on the front side of the building facing the road, one of which being the subject matter of the instant suit. The tenant’s occupation of the room was only temporary and limited to residential purpose only. Her son used to sleep in that room but after he moved out, the applicant converted it into a shop without the landlord’s authority or consent.
9. The 1st Respondent deposes that he had on several occasions requested the Applicant not to continue using the premises as the purpose had since “expired” but she kept on using the same as a shop. As a result, the 1st Respondent asked the tenant to pay rent of Kshs.5000/- if she continued using the house as a shop but she refused
10. According to the 1st Respondent, the business conducted by the applicant is illegal as no licences from relevant authorities have been exhibited and the same was unregistered. The Applicant moved into the house in 2016 as per the 1st Respondent and not 2013 as claimed by her. The house was however let out to her in 2019 when her son came into the picture and the same was used as a residence and not a shop.
11. The 1st Respondent deposes that he has suffered loss and continue to do so as the applicant has refused to pay the required rent of Kshs.5000/- for the shop but the tenant has refused to vacate leading to loss of business to the landlord.
12. As such, the application has no merit and ought to be dismissed with costs according to the Respondents.
13. The tenant filed a supplementary affidavit sworn on 12th January 2023 in which she reiterates that she has been a tenant in the suit premises for 9 years since 2013 to date wherein she occupied three rooms but currently occupies only two rooms for residential purposes.
14. In 2019, the tenant deposes that she rented the suit premises for purposes of business of a grocery shop and later changed it into a general shop paying a monthly rent of Kshs.2000/-. The Respondents have never raised any complaints over the use of the suit premises as a shop. They had been accepting rent from the tenant.
15. There has never been a written tenancy agreement between the parties herein but the initial rent payable is admitted by the 1st Respondent. In absence of a written agreement, the tenancy is controlled. The tenant annexes Mpesa Statement and payment evidence to Muranga County Government for business permit as annexure “TNK-2”.
16. Both parties filed written submissions in support of their respective positions which I shall consider together with the issues for determination set out below.
17. Based on the pleadings, the following issues arise for determination:-



- a. Whether there exists a controlled tenancy between the parties herein.
 - b. Whether the tenant is entitled to the reliefs sought in this matter.
 - c. Who is liable to pay costs of the suit?
18. In the replying affidavit of the 1st Respondent, it is deposed that the suit premises was converted into a shop by the tenant without authority of the landlord. The premises is admittedly on the same front with other premises used as shops adjacent to the road. The 1st Respondent does not indicate when the conversion took place and what action he took to ameliorate the situation. He continued accepting rent from the tenant nevertheless.
 19. According to the tenant, he started the business of a grocery shop which she later converted into a general shop and has exhibited evidence of some payments made to Muranga County Government for the business. In absence of any written agreement, the tenancy is controlled within the meaning and interpretation of Section 2(1) of [Cap. 301](#), Laws of Kenya.
 20. The dispute between the tenant and the Respondents appear to be on the amount payable as rent for use of the suit premises as a shop as opposed to a residential house. The landlords have not exhibited any notice for increment of rent from Kshs.2000/- to Kshs.5000/- to warrant closure of the suit premises on account of failure to pay the new rent as prescribed by Section 4(2) of Cap. 301. The landlords' demand for higher rent is not enforceable in absence of strict compliance with the said provision or mutual agreement with the Tenant.
 21. I have seen the decisions cited by counsel for the tenant in the cases of *BP Nairobi Service Station Ltd vs. BP Kenya Ltd* (1989) eKLR, *Aroko – vs- Ngotho & Another* (1991) eKLR & [Nancy Njeri Gitau & vs. James Muchone Njuga & Another](#) (2021) eKLR and agree with the submissions that they all support the tenant's case herein.
 22. I also agree with the decision in [Mohammed Samin Asgar -vs- Muktagauir Patel](#) (2021) eKLR where it was held as follows:-
 - “21. It is trite law that unless a tenant consents or agrees to give possession, the landlord has to obtain all orders from a competent court or a statutory Tribunal to obtain an order for possession. As was stated in the case of [Gusii Mwalimu Investment Company Limited – vs- Mwalimu Hotel Kisii Limited](#) C.A Civil Appeal No. 160 of 1995 at page 10 of the decision.
 22. In the absence of a court order, I find that the landlord acted in total disregard of the law when he unlawfully locked up the suit premises thereby depriving the tenant of his possession. The landlord's action amounted to constructive eviction of the tenant from the suit premises. Since the landlord did not obtain a court order for possession, the tenant's eviction from the suit premises was illegal and unlawful”.
 23. In the instant case, the landlords attempted to illegally evict the tenant by welding the door to the suit premises without any court order or other lawful sanction from this Tribunal. This was akin to what



was discussed in the case of Caren Okore – vs- Bemuda Holdings Limited (2021) eKLR at paragraphs 9(c) & (d) where it was observed as follows:-

“(c) The mode of the termination of the tenancy that the landlord adopted in this case was the closure of the Tenant’s business premises. That was clearly illegal and contrary to the provisions of Section 4(2) of Cap. 301...”

“(d) In view of this finding the landlord will not be entitled to any rent from the tenant from the date of the illegal closure of the tenant’s business until the date that the same was opened, that is to say from 24th March 2021 to 6th May 2021”.

23. In view of the foregoing analysis, I am satisfied that the tenant who was faced with imminent illegal eviction was entitled to file the complaint herein against the Respondents and to the reliefs claimed in the application dated 2nd December 2022.
24. Costs of every action before the Tribunal are at its discretion under Section 12(1) (k) of Cap. 301, Laws of Kenya but always follow the event unless for good reasons otherwise ordered. I have no reason to deny the tenant costs.
25. In conclusion, the final orders which commend to me in this case under Section 12(4) of Cap. 301, Laws of Kenya are:-
 - a. That there exists a controlled tenancy between the tenant and the Respondents in respect of the suit premises under Section 2(1) of Cap. 301, Laws of Kenya.
 - b. That the Respondents are hereby restrained by themselves, servants, employees, caretakers, agents or any other persons claiming under them from harassing, intimidating, closing, evicting, threatening, disconnecting electricity supply or in any other manner interfering with the tenant’s quiet enjoyment of the suit premises in contravention of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Cap. 301, Laws of Kenya.
 - c. That the tenant is awarded costs of Kshs.10,000/- against the Respondents to be deducted from rent.
 - d. The Respondents are at liberty to issue proper notices under Cap. 301, Laws of Kenya notwithstanding order (b) above upon the tenant should they so desire.
 - e. Complaint is marked as settled in the foregoing terms.

It is so ordered.

RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 17TH DAY OF MARCH 2023.

EWS

HON. GAKUHI CHEGE

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of:

Miss Kogai holding brief for Miss Oketch for Tenant

Landlord in person.

