



**Anderson Developers Limited v Ikinya & 7 others; Njagi (Interested Party)
(Tribunal Case E027 of 2023) [2024] KEBPRT 807 (KLR) (3 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 807 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E027 OF 2023
A MUMA, MEMBER
JUNE 3, 2024**

BETWEEN

ANDERSON DEVELOPERS LIMITED APPLICANT

AND

BETTY IKINYA 1ST RESPONDENT

JOHN KINYUA 2ND RESPONDENT

JONATHAN GITARI 3RD RESPONDENT

LILIAN MUTHOKI NJUKI 4TH RESPONDENT

JOACHIM KALAMU 5TH RESPONDENT

FRENE MUCHIRI 6TH RESPONDENT

ELIZABETH MURIITHI 7TH RESPONDENT

KEN IRERI 8TH RESPONDENT

AND

EVANGELINE MUTHONI NJAGI INTERESTED PARTY

RULING

A. PARTIES AND REPRESENTATIVES

1. The Applicant, Anderson Developers Limited, is the owner (hereinafter the Landlord) of the rental units known as Stall No. 87 located at Eva Plaza situated in Siakago, Embu County (hereinafter the suit premises).
2. The firm of Mwenda Njagi & Company Advocates represents the Landlord in the matter.



3. The Respondents, are the occupants of the suit premises for purposes of conducting business (hereinafter the Tenants).
4. The firm of Musyoka Munyao Advocates represents the 5th Respondent in the matter.
5. The other Respondents have no legal representatives hence collectively appear in person.
6. The Interested Party, Evangeline Muthoni Njagi, is the immediate former owner and Landlady of the suit premises (hereinafter “the former Landlady”).

B. BACKGROUND OF THE DISPUTE

7. The Landlord moved this tribunal vide a Reference and Application under a Certificate of Urgency dated 8th June 2023 seeking inter alia: the Tenants hand over vacant possession of the suit premises, the O.C.S/ D.C.I.O Siakago Station ensure compliance and liberty be granted to the Landlord to appoint an auctioneer to grant vacant possession of the same upon non-compliance of the prayers sought.
8. The Court certified the matter urgent vide an Order issued on 15th June 2023.
9. The 5th Respondent filed his Notice of Preliminary Objection dated 11th September 2023 alongside a Replying Affidavit of even date.
10. The Court vide an Order issued on 18th September 2023, directed the Landlord to file a valuation report within 21 days of the date thereof and respond to the Replying Affidavit dated 11th September 2023. In addition to this, the Court directed the Tenants to pay rent to the new Landlord on old dates for the period commencing on October 2023 pending the hearing and determination of the matter.

C. THE LANDLORD’S CLAIM

11. The Landlord avers that the Tenants were paying monthly rent to the former Landlady and that they were controlled tenants under Section 2 of the [*Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act*](#) Chapter 301 Laws of Kenya.
12. It is the Landlord’s case that it bought the entire suit premises vide a Sale Agreement dated 15th February 2023 from Evangeline Muthoni Njagi being the previous Landlady/Vendor (hereinafter “the former Landlady”) and with whom the Tenants had entered into tenancy relationships with.
13. The Landlord claims that it had mutually agreed with the former Landlady that it would take actual, physical and vacant possession of the suit premises by 31st June 2023.
14. Given that the purchase date of the suit property (15th February 2023) and the anticipated date of vacant possession of the suit premises (31st June 2023), the Landlord avers that it has never disrupted the tenancy, normal operations and conduct of their businesses of the Respondents herein thus honoring their peaceful enjoyment of the premises.
15. Additionally, the Landlord avers that it has not collected any rent from any of the Tenants and accordingly, the Tenants had exhausted/depleted the rental deposits previously paid to the former Landlady as at the time of filing the reference.
16. It is the Landlord’s further averment that he intends to take vacant possession for purposes of renovation and/or demolition of the suit premises.



D. THE 5TH TENANT'S CLAIM

17. The 5th Tenant claims that the Application by the Landlord is frivolous, vexatious and an abuse of the court process.
18. He avers in his Replying Affidavit that he is a tenant in Room E of the suit premises, without a tenancy agreement and that he has been in occupation of the said premises for the past seven years conducting the business of a law firm.
19. The 5th Tenant adds that he has never been in default of rent as at 11th September 2023 having already paid the rent of the next month being October 2023.
20. Additionally, it is the 5th Tenant's claim that he has created an inalienable business good will and that the Landlord intends to take advantage of this by evicting him from the premises.
21. Moreover, the 5th Tenant avers that the Landlord is misrepresenting himself as no notice of sale was served upon the 5th Tenant to signify change of ownership nor a Notice to Terminate in the prescribed form as required by the law.

E. JURISDICTION

22. The jurisdiction of this Tribunal is contested by the Tenant on the grounds that the premises are located within Embu and therefore, this Tribunal lacks territorial jurisdiction to hear and determine the Landlord's Reference and Application.
23. I note that although the Tribunal has its registry, it sits in different stations around the country and therefore, has jurisdiction to hear and determine matters between landlords and tenants in respect of business premises within the country.

F. LIST OF ISSUES FOR DETERMINATION

24. I have carefully perused the material placed before this court by the parties and it is my considered opinion that the following issues fall for determination:
 - a. Whether the Landlord should get vacant possession of the suit premises

H. ANALYSIS & DETERMINATION

- a. Whether the Landlord should get vacant possession of the suit premises
 25. In this matter, the Landlord wishes to terminate the tenancy with the Tenants herein and obtain vacant possession of the suit premises on the ground that there was a transfer of ownership of the suit premises from the former Landlady to itself.
 26. This Court takes notes of the evidence produced by the Landlord to support the ground of transfer of ownership. Particularly, the Landlord has produced a cheque of Kshs. 3,000 paid to the County Government of Embu whose purpose has been indicated as a transfer fee received from the former Landlady.
 27. Additionally, the Landlord has produced a copy of the approval from the Embu County Government being an extract of the Department of Land and Physical Planning County Land Management Board Committee which was held on 24th April 2023.



28. The 5th Tenant disputes the validity of the Applicant being the rightful Landlord and claims that the Landlord is misrepresenting himself.
29. However, despite the former Landlady being named as an Interested Party in this matter, she has not raised any objections to this issue. Moreover, the 5th Tenant has not provided any evidence to support his claim thus this matter is well before the Tribunal.
30. As an additional ground for seeking vacant possession, the Landlord stated in his Supporting Affidavit dated 8th June 2023 that he intends to demolish and renovate the premises to suit his needs.
31. This Honourable Tribunal notes that the Landlord has not provided any evidence to support this claim.
32. It is not disputed that the Tenants were under a controlled tenancy. In view thereof, the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya Act at section 4(2) provides for termination of controlled tenancies by stating that:

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.

33. Section 4(4) further provides that:

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

34. In the case of *Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited*, Civil Appeal No. 203 of 1994 it was stated as follows;

“The Act lays down clearly and in detail, the procedure for the termination of a controlled tenancy. Section 4(1) of the Act states in very clear language that a controlled tenancy shall not 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 specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the tenant. The notice must also specify the ground upon which termination is sought. The prescribed notice in Form A also requires the landlord to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice.”

35. The Landlord has not issued a tenancy notice to the Tenants which goes against the procedure outlined by the as per the Provisions of CAP 301 as quoted above.
36. Section 7 of the Act provides for the grounds within which Landlord is allowed to issue a termination notice and at subsection (f) it provides as follows;

Where under section 4 of this Act served a notice of termination of a controlled tenancy on the tenant, the grounds on which the landlord seeks to terminate such tenancy may be such of the following grounds as are stated in the aforesaid notice—

That on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial



work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises;

37. However, these grounds must be supported by evidence. In this case, nothing has been placed before this Court to demonstrate the Landlords' intention to renovate, which renovation cannot be done without obtaining possession of the premises. In the absence of such evidence, this Tribunal is not in a position to verify the Landlords' claim or intention to renovate.
38. In light of the foregoing, as well as the failure of the Landlord to issue a tenancy notice to the Tenants, it is evident that the Landlord has not followed due procedure as it is required to do by the law.

DIVISION - I. ORDERS

39. The upshot is that the Tenant's Preliminary Objection dated **11/9/2023** is allowed, the landlords Reference and application dated **8th June 2023** is not merited and the same is dismissed;
- a. Landlord is at liberty to issue a two months' notice to the tenants in the prescribed form and with good reason.
 - b. Tenants to keep paying rent to the new Landlord as and when it falls due; and
 - c. Each party to bear its own cost

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling **dated, delivered and signed** at **Nairobi** on this **3rd day of June 2024** in the presence of **Musyoka** for the 5th Tenant and No appearance for the Landlord.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

