



**Atieno & 5 others v Odengo & another (Tribunal Case E440 of 2024)
[2024] KEBPRT 1216 (KLR) (28 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1216 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E440 OF 2024
A MUMA, MEMBER
AUGUST 28, 2024**

BETWEEN

ROSE ATIENO & 5 OTHERS APPLICANT

AND

PHILIP ODENGO 1ST RESPONDENT

BENARD KORIR 2ND RESPONDENT

RULING

A. Parties And Their Representatives

1. The Applicant, Rose Atieno together with 5 others, (hereinafter ‘the tenants’) have been tenants of business premises known as Plot No. 44 Rabai Road Light Industries, located in Burburu, Nairobi (hereafter ‘the suit premises’), for a period of 16 years to date; duly paying rent and have no any rent arrears.
2. The firm of S. N Thuku & Associates is on record for the Tenants.
3. The 2nd respondent, Bernard Korir (the 2nd respondent) claims that he is the legal owner of the land where the suit premises is built.
4. The 2nd respondent acts on his own capacity in the suit.

B. Background Of The Dispute

5. The tenants moved this Tribunal by way of a Notice of Motion dated 28th May 2024 under certificate of urgency of even date. The tenants sought, inter alia, injunction orders restraining the 2nd respondent from evicting, attempting to evict, attaching, selling or interfering with the tenant’s business premises.



6. The tenants claim that the 2nd respondent unreasonably issued a notice threatening to demolish their shops through a letter dated 24th May 2024 addressed to Buruburu Police Station attached to the application as SNT 1. They further aver that it seems there is a land ownership dispute between the 1st and the 2nd respondent which should not affect them. CMELC NO. E193 OF 2022.
7. Accordingly, the tribunal on 4th June 2024 ordered that the applicant to serve the Application for inter partes hearing on 11th June 2024.
8. The 2nd respondent responded to the tenants claims through a replying affidavit dated 19th July 2024. He claims that notice to vacate the suit premises was duly issued on 1st July 2024 to the tenants and that 6 tenants had already vacated the suit premises. However, there is no attachment of the said notice to this tribunal.
9. The 2nd respondent further avers that he owns the piece of land upon which the suit premises is built and requests the tribunal to summon Mr. Phillip Odengo, the 1st respondent to produce the documents before the honorable tribunal to verify his ownership of the piece of land.

C. Issues For Determination

10. Having carefully perused the Application and Responses presented by parties, it is therefore my respectful finding that the issues for determination before this honorable tribunal are:
 - a. Whether Notice to Vacate the Suit Premises issued by the 2nd respondent valid?
 - b. Whether this tribunal has the requisite jurisdictions to summon the 1st respondent to produce documents to verify legal ownership of the land in which the suit premises are situated?

D. Analysis And Determination

a. Whether the Notice to Vacate the suit premises issued by the 2nd respondent valid?

11. Notice of termination of tenancy is a matter of law under Section 4 (2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301 Laws of Kenya (hereinafter “the Act”) and must be taken into consideration by both parties in a tenancy relationship.
12. The position of the law on the issue of termination notice is now settled. The court in *Manaver N. Alibhai T/A Diani Boutique vs South Coast Fitness 7 & Sports Centre Ltd*, Civil Appeal No. 203n of 1994, stated that:

“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.”
13. It is evident that the letter addressed to the Buruburu Police Station dated 24th May 2024 herein was not in the prescribed form by the Act. Further, the termination letter did not specify when the eviction was to take place as it indicated at paragraph 2; “..... that any day from now, I will be removing some



illegal structures built in my plot....” And that there is no tenancy relationship between the tenants and the 2nd respondent.

14. Hence, it is my finding that the Notice issued does not meet the requirement of the Act and therefore invalid. Accordingly, I will proceed to address the 2nd issue.

b. Whether this tribunal has jurisdictions to summon the 1st respondent to produce documents to verify legal ownership of the land in which the suit premises is situated?

15. The 2nd respondent has invited this honorable Tribunal to summon the 1st respondent to produce documents to prove ownership of the land upon which the suit premises is built. It is therefore necessary for the tribunal to determine whether it is within its confine to grant such orders.
16. This tribunal is a creature of the statute and derives its powers from the statute that creates it. Its jurisdiction is thus limited by the statute. It can only do that which statute empowered it to do since its powers are express and cannot be implied. It is with that in mind that I find that under Section 12 of the Act, this tribunal can only determine disputes relating to:
- i. The amount of rent payable by a tenant;
 - ii. The termination of tenancy;
 - iii. The recovery of possession of a business premises by a landlord; and
 - iv. Any other matter relating to business premises rent.
17. Based on the above analysis, I find that this tribunal lacks jurisdiction over land ownership disputes, which fall within the exclusive purview of the Environment and Land Court.
18. Before a determination is therefore made in CMELC NO E193 OF 2022 the presumption as to ownership will remain on the occupant of the land in this case Philip 1st Respondent unless there is an express order to the contrary from the Magistrates Court granting 2nd Respondent the said rights even on a temporary basis.

E. Orders

19. In the upshot, the Tenants’ Application dated 28th May 2024 is hereby allowed in the following terms:
- i. The eviction notice issued by the 2nd respondent through a letter dated 24th May 2024 is invalid;
 - ii. The 2nd respondent is hereby restrained from evicting, attempting to evict, attaching, selling or interfering in any way with the tenants’ business premises until the dispute on ownership of the land upon which the suit premises is built is determined by a competent court with requisite jurisdiction;
 - iii. The tenants to continue paying rent to whoever they have been paying;
 - iv. The OCS Buruburu Police Station to ensure compliance; and
 - v. Each party to bear their cost.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL



RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 28TH DAY OF AUGUST 2024

in the presence of Maina holding brief for Thuku for the Tenant and in the absence of the for Landlord.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

