



**Kamulu v Pere & another (Tribunal Case 38 of 2017)  
[2023] KEBPRT 1195 (KLR) (26 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1195 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE 38 OF 2017  
CN MUGAMBI, CHAIR  
MAY 26, 2023**

**BETWEEN**

**JANET MUTENDE KAMULU ..... TENANT**

**AND**

**ANTONY PERE ..... 1<sup>ST</sup> LANDLORD**

**VITAL PROPERTIES (K) LIMITED ..... 2<sup>ND</sup> LANDLORD**

**RULING**

1. The landlord's notice to terminate tenancy is the one dated 24<sup>th</sup> April 2017 and is brought on the ground that:-  
  
    "the owner wants to use the shop"
2. The tenant in opposition to the said notice filed a reference to the tribunal under Section 6 of [Cap 301](#) dated 19<sup>th</sup> July 2017.
3. This matter proceeded for hearing on 22.2.2023 when both parties testified with the landlord calling one witness while the tenant testified on her own behalf.

**The Landlord's Case**

4. The statement of the landlord's first witness evidence in chief may be summarized as follows;-
  - a. That she is the sister to Anthony Pere and she was in occupation of the premises before the tenant herein occupied the same.
  - b. That the witness operated a salon business in the suit premises until 2007 when the tenant came into the premises and started sharing the same with the witness.



- c. That the witness left the suit premises in the year 2014 due to illness and when she got well and decided to go back into the premises in the year 2016, the tenant would not allow her into the premises, the tenant also refused to vacate the premises to give way to the witness.
  - d. That by a notice dated 24.4.2017, the tenant was required to vacate the premises but she filed a reference dated 19.7.2017 in opposition to the notice to vacate.
  - e. That the witness wants the premises back in order to earn a livelihood.
  - f. That due to the bad blood between the parties created by the tenant, the parties can no longer work together under the same roof.
5. Upon cross examination, the witness's responses may be summarized as follows:-
- a. That the witness is not the landlord.
  - b. That Janet (the tenant) has been in the premises since 2007 pursuant to an agreement she had with Anthony Pere, the landlord.
  - c. That although the witness shared the suit premises with the tenant up to 2014, the lease agreement makes no provision for the sharing of the premises.
  - d. That the witness has no authority to remove the tenant from the suit premises.
  - e. That the witness left behind a shelf, a counter and beauty products when she vacated from the premises.
  - f. That the business permit she produced in court is for the year 2007 and she does not have a current one.
6. The evidence of Benjamin Nduati, the landlord's second witness may be summarized as follows and in terms of his statement which was adopted as his evidence:-
- a. That he is the director and property manager of the 2<sup>nd</sup> Respondent, who became managing agents of the suit premises on 30.7.2015.
  - b. That Anthony Pere, the landlord had informed the 2<sup>nd</sup> Respondent that the suit property was under Francisca Wanjiru Pere who was running a salon business there. The said Francisca was sharing the shop with the tenant.
  - c. That Francisca was unable to work in the suit premises in the year 2014 when she got ill.
  - d. That the 2<sup>nd</sup> Respondent's instructions from the landlord was that the suit premises was to be occupied by the landlord's sister.
  - e. That the 2<sup>nd</sup> Respondent's prayer is that the Tribunal honours the landlord's wishes that his sister be allowed to occupy the premises
7. Upon cross examination by counsel for the tenant, the witness (Benjamin Nduati) stated in response:-
- a. That when he started managing the suit premises, he found Janet (tenant) therein.
  - b. That he has been collecting rent from the tenant and there are no issues.
  - c. That the 2015 lease agreement does not show that Janet (tenant) and Francisca, (the landlord's 1<sup>st</sup> witness) were to share the suit premises.



- d. That the witness is not aware that the tenant had carried out any renovations on the suit premises.
- e. That he signed the lease with the tenant and he is the one who issued to the tenant the notice to terminate tenancy
- f. That the lease agreement required the landlord's consent before any renovations could be carried out.

### **The Tenant's Case**

8. The tenant adopted her statement dated 12.9.2022 as her evidence and also produced as her exhibits the documents in her list of documents, exhibit 1-7. The tenant's statement may be summarized as follows:-
  - a. That on 1.12.2007, the tenant entered into a lease agreement with the landlord, Anthony Pere, the agreement was executed by the landlord's mother, Mary Teresa Olepere who had been given a power of attorney by the landlord.
  - b. That the tenant shared the suit premises with the landlord's sister, Francisca Wanjiru Pere.
  - c. That on 30.7.2015, the landlord appointed the 2<sup>nd</sup> Respondent as his agents and the tenant paid her rent into an account appointed by the 2<sup>nd</sup> Respondent as from 1.8.2015.
  - d. That on 19.8.2015, the tenant received a notice from the Public Health Department requiring certain repairs to be carried out and the landlord agreed with the tenant that the tenant being in occupation would carry out the repairs and keep a record of the expenses incurred during the renovations. The tenant incurred a total amount of Kshs. 40,500/= in the renovations.
  - e. That the lease agreement was renewed with effect from 20.8.2015 in the presence of the landlord himself.
  - f. That the landlord requested Francisca to remove her things from the suit premises but she declined.
  - g. That in February 2016, the landlord introduced another tenant into the premises with a view of having the said tenant share the premises with the tenant/Applicant but the tenant declined.
  - h. That on 24.4.2017, the landlord issued the tenant with a notice to terminate tenancy while the lease was still in existence, in opposition of which the tenant filed the instant reference.
  - i. That the tenant claims renovation costs of Kshs. 42,500/= from the landlord.
9. Upon cross examination by counsel for the landlord, the tenant stated as follows:-
  - a. That she signed leases with the landlord in 2007, 2010 and 2015. The lease had no provision for sharing of the premises.
  - b. That the 2015 lease was to expire in the year 2018.
  - c. That clause 10 and 11 of the landlord's exhibit No.2 requires the written consent of the landlord to effect any renovations.
  - d. That there was no written consent by the landlord authorizing the tenant to carry out any renovations.



- e. That the tenant has not made any formal demand for the refund of the funds she expended in the renovations.

### **Parties submissions**

10. Both parties have filed written submissions and I have read the same. I will consider the issues raised in the submissions while making a determination herein.

### **Issues for determination**

11. The issues that arise for determination and which have also been framed by the parties are the following:-
  - a. Whether the notice of termination of tenancy issued by the landlord herein is valid
  - b. Whether the landlord has by his notice to terminate tenancy dated 24.4.2017, established the grounds for termination set out therein.
  - c. Whether the tenant is entitled to compensation for the costs incurred by herself in renovating the suit premises.

### **Issue A**

12. The relevant lease agreement in this dispute is the one dated 25.5.2015. it was to run for a period of three years and three months which means that the lease expired sometimes in the year 2018 around August. There is evidence (oral) that the tenant continued to pay rent to the agents of the landlord even after the lease expired. The landlord's second witness who is also the 2<sup>nd</sup> Respondent confirmed that he has been receiving rent from the tenant. Effectively the tenancy became a month to month tenancy and therefore a controlled tenancy. (See Section 60(2) of the [Land Act 2012](#)).  
  
In think it is in recognition of this fact that the landlord issued to the tenant the notice to terminate tenancy dated 24.4.2017.
13. The tenant has challenged the aforesaid notice largely on the basis that it was issued while the lease agreement between the parties was in existence. I do not think the Act ([Cap 301](#)) prohibits the landlord from issuing a notice to terminate tenancy before the expiry of the lease. Actually, the very reason a notice to terminate tenancy is necessary is the existence of a lease agreement as there would be no reason to issue a notice to terminate a tenancy which has by the very terms of the lease expired.
14. I have perused the notice to terminate tenancy dated 24.4.2017 and I find that it satisfies the requirements of Section 4 of [Cap 301](#) and it is therefore a valid notice.

### **Issue B**

15. The notice to terminate tenancy is brought on the ground that; "the owner wants to use the shop."  
Section 7(g) of [Cap 301](#) provides for the following ground for termination of tenancy:-

"Subject as hereinafter provided, that on the termination of the tenancy the landlord himself intends to occupy for a period of not less than one year the premises comprised in the tenancy for the purposes or partly for the purposes of a business to be carried on by him herein or at his residence."



This seems to be the Section of the law the landlord is relying upon in seeking to terminate the tenancy although the notice to terminate is not worded as such.

16. The landlord has not led any evidence to support the allegation that he intends to put the premises to his own use. What emerges is that it is his sister who wants to occupy the premises and put it to her own use. The question then is, whether it can be said to be a valid ground to terminate tenancy under [Cap 301](#) where the landlord does not intend to occupy and use the premises but intends that the same be occupied by a relative and a close one for that matter. would the occupation of the premises by the relative amount to the occupation by the landlord contemplated under Section 7(g) of [Cap 301](#)?
17. Section 7(g) of [Cap 301](#) requires that the landlord HIMSELF intends to occupy the premises..for the purposes of a business to be carried on by “HIM” therein or at his residence. I do not understand that section of the law to include businesses to be carried out by the landlord’s relatives and if that were so, the law would have stated so!

It is my finding therefore that, on this score alone, the landlord has not established the ground he has sought to rely on to terminate the tenancy.

### Issue C

18. The tenant testified that she carried out repairs on the suit premises and thereby incurred expenses in the sum of Kshs. 40,500/=. The tenant’s evidence is that the Public Health Department demanded these renovations and further that the landlord agreed to the renovations. On cross examination, the tenant confirmed that indeed the letter from the Health Department was addressed to the agents of the landlord and not to the tenant. The tenant further confirmed that she had not made any formal demand for the compensation. The tenant though, admitted that the lease between the parties required that the consent of the landlord in writing was necessary before any renovations could take place. In this regard, clauses 10 and 11 of the lease agreement dated 20.8.2015 provides as follows:-

“10- The tenant shall not make any alteration to the said premises or drive nails, screws into the walls without the written consent of the landlord or his agents first hand and obtained.”

“11- the tenant shall meet the costs of any renovations or modification that he/ she deems fit in the premises but must first obtain consent of the landlord.”

19. Although the tenant stated that she had informed the landlord’s agents about the notice for the repairs from the Public Health Department, no evidence of such a letter informing the 2<sup>nd</sup> Respondent was produced in evidence.
20. Further, I have not seen any letter from the tenant to the landlord or to the landlord’s agents requesting for permission/consent of the landlord to carry out any repairs or renovations upon the premises. I have also not seen any evidence of the landlord’s written consent allowing the tenant to carry out any renovations on the suit premises.
21. Consequently, any renovations done by the tenant on the suit premises were done without the consent of the landlord and he cannot be required to pay for the same.
22. In any case, even if the consent of the landlord had been obtained, clause 11 of the lease agreement provides that the tenant is to meet the costs.
23. Consequently, there is no basis upon which the landlord may be called upon to meet the costs of the renovations. The tenant’s claim in this regard fails.



**Final disposition**

24. Having arrived at the above findings, I do make the following orders:-

- a. That the landlord's notice to terminate tenancy dated 24.4.2017 shall be of no effect.
- b. That the tenant's claim for Kshs. 40,500/= against the landlord is dismissed.
- c. That each party shall bear their own costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF MAY 2023.**

**HON. CYPRIAN MUGAMBI**

**CHAIRMAN**

**26.5.2023**

In the presence of;

Parties absent

