



**Gitau v Mbugua (Tribunal Case E181 of 2024)
[2024] KEBPRT 823 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 823 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E181 OF 2024
A MUMA, MEMBER
JUNE 20, 2024**

BETWEEN

DAVID KIMUNYU GITAU APPLICANT

AND

ELIZABETH WANJIKU MBUGUA RESPONDENT

RULING

A. Parties And Their Representatives

1. The Applicant, David Kimunyu Gitau, occupies the business premises known as Musa House 5J (“the Tenant”).
2. The firm of Kivuva Omuga & Company Advocates represents the Tenant in this matter.
3. The Respondent, Elizabeth Wanjiku Mbugua, is the proprietor of the business premises known as Musa House 5J situated in Nairobi Central Business District (“the Landlady”).
4. The firm of Gikenye Mugo & Rienye Advocates represents the Landlady in this matter.

B. Dispute Background

5. The Tenant moved this Honorable Tribunal vide a Reference and Application evenly dated 7th February 2024. The Tenant sought, inter alia, the following Orders from this Honorable Tribunal:
 - I. The Landlady, their agents, servants, employees and/or nominees or whosoever be restrained by an order of temporary injunction from evicting, trespassing, distressing for rent, restraining for rent, harassing or in any other way from interfering with the Tenant’s occupation of all those business premises known as Musa House 5J situated in Nairobi Central Business District.



- II. That pending the hearing and the final determination of the Application, the Landlord, their agents, servants, employees, and/or nominees or whosoever be ordered to immediately reconnect Electricity supply in all those business premises known as Musa House 5J situated in Nairobi Central Business District.
- III. That the orders of the Honourable Court be enforced and/or supervised by the O.C.S Kamukunji Police Station
- 6. Having considered the Tenant's Application, the Tribunal vide an Order dated 9th February 2024 allowed the afore-mentioned prayers in the interim.
- 7. Subsequently, the Landlady filed a Replying Affidavit dated 3rd April 2024 in response to the Tenant's Application and Reference dated 7th February 2024.

C. Tenant's Claim

- 8. Despite Covid-19 pandemic gravely affecting his business, the Tenant avers that he has been paying rent faithfully to the Landlady through the appointed authorized agents, Alliance Realtors Limited (from August 2023 to November 2023) and Kenstate Valuers Limited (from December 2023 to date).
- 9. He further avers that he wrote a letter dated 1st June 2020 to the Landlady requesting her to allow him to sub-divide and convert the rented business premises to business stalls at the agreed monthly rent of Kshs.36,800.00.
- 10. He further avers that on or about June 2020, the Landlady responded to his request via a letter, acknowledging receipt of his letter and gave him the go-ahead to sub-divide, convert and sublet the suit premises.
- 11. The tenant avers that he proceeded to sub-divide, convert and sublet the business premises to his sub-tenants who are presently in occupation of the suit premises.
- 12. The Tenant asserts that the Landlady, acting through her agents, Kenstate Valuers Limited, visited the business premises and harassed the Tenant's sub-tenants, threatening to evict them for unpaid rent which they did not owe.
- 13. He further avers that on 25th January 2021, the Landlady disconnected the electricity supply on the rented business premises without any notice, reason or explanation.

D. Landlord's Defence

- 14. The Landlady avers that an oral lease agreement existed between her and the Tenant.
- 15. She also avers that she never received the alleged letter dated 1st June 2020, as she was out of the country for treatment and had not authorized anyone to act on her behalf at that time.
- 16. Additionally, she claims that the Tenant has completely distorted the shape and form of the premises without her consent.
- 17. She further avers that the Tenant proceeded to close the common toilets and has ordered tenants to pay Kshs.10.
- 18. She further avers that the warping and portioning by the Tenant is not only wanting in workmanship but also poses an impending hazard to the other occupants of the premises.
- 19. She avers that the sublets are illegal and a breach of the tenancy agreement.



20. It is the Landlady's prayer that this Honorable Tribunal dissuades the illegalities committed by the Tenant and have the premises restored to its authentic state.

E. Issues For Determination

21. Having carefully perused all the pleadings and evidence presented before this Honorable Tribunal by the parties, it is my respectful finding that the sole issue for determination is:
1. Whether the Tenant's application dated 7th February 2024 should be allowed?

F. Analysis And Findings

Whether the Tenant's Application dated 7th February 2024 should be allowed?

22. The *Landlord and Tenant (Shops, Hotels and Catering Establishments)* Cap 301, Laws of Kenya (hereinafter the "Act") is the governing legislation that provides protection to tenants of certain premises from eviction or exploitation, and addresses matters connected therewith and incidental thereto
23. Section 2(1) of the *Act* defines a controlled tenancy as:
- ‘tenancy of a shop, hotel or catering establishment—
- (a) which has not been reduced into writing; ‘
24. In the instant case, the tenancy between the parties has not been reduced in writing. As such it is an oral agreement, which aligns with the definition of Section 2(1)(a) of the *Act*. Consequently, the governing legislation of the tenancy is the Act.
25. Section 4 of the *Act* provides for the termination of and alteration of terms and conditions in controlled tenancy.
26. Moreover, Section 7 of the *Act* outlines the grounds under which a landlord may seek to terminate a tenancy upon serving a valid notice of termination.
27. As established above, the tenancy in question is classified as a controlled tenancy, and therefore it can only be terminated, terminate or altered in accordance with the *Act*. If the Landlady wishes to terminate the controlled tenancy or make any alterations to any term or condition to the detriment of the Tenant, she is required to provide a notice in the specified Form A, as outlined in Rule 4(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms And Procedure) Regulations*.
28. Moreover, the notice period shall only take effect upon the lapse of two months after the receiving party has received the notice.
29. Additionally, the notice must specify the grounds for termination as detailed in Section 7 of the *Act*. The grounds, in summary, include failure by the Tenant to comply with repair and maintenance obligations, non-payment of rent by the Tenant, substantial breaches of tenancy obligations by the Tenant, subletting part of the premises, demolition, reconstruction or substantial work of the premises, and the landlord's intention to occupy the premises.
30. In the current case, the Landlady has not issued any notice or complaint to the Tenant regarding seeking rent arrears, restoring the property to its original state, or closure of the common toilets. Instead, the Landlady and or her agents has allegedly harassed the Tenant and the sub-tenants. It is important to note at this juncture that agents act on behalf of the principal and all their actions constitute an



admission on the part of the principal and this includes the letter allowing sub tenants during covid period, it bind the landlord.

31. In light of the above, despite the tenancy being classified as controlled, the Tribunal contends that the Landlady has failed to issue a proper notice or complaint against the Tenant.
32. Concerning the state of disrepair, the landlady can file a complaint before this Tribunal to address the same.

G. ORDERS

33. In the upshot, the Tenant's Reference and Application dated 7th February 2024 is hereby allowed and the:
 - a. The Landlady is granted leave to serve a valid notice against the Tenant with good reasons.
 - b. Each party shall bear their own costs

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

**RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 20TH DAY OF JUNE 2024
IN THE PRESENCE OF MWIKALI FOR THE TENANT AND GIKENYI FOR THE LANDLORD**

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

