



**Katana v Said (Tribunal Case E060 of 2024)  
[2024] KEBPRT 1539 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1539 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E060 OF 2024  
CN MUGAMBI, CHAIR  
OCTOBER 4, 2024**

**BETWEEN**

**SALMA MASUDI KATANA ..... TENANT**

**AND**

**UMI MOHAMED SAID ..... LANDLADY**

**RULING**

**Introduction**

1. The Landlady's notice to terminate tenancy dated 8.02.2024 is brought on the grounds;-
  - a. That on termination of the tenancy, the Landlord intends to carry out her (sic) own business for a period of more than one year.
  - b. That the Tenant has sublet the premises contrary to Cap 301 of the Laws of Kenya.
2. The Tenant has duly filed a Reference in opposition to the notice to terminate tenancy which culminated to the hearing of the said Reference on 18.7.2024.

**The Landlady's case**

3. The evidence of UMI MOHAMED SAID may be summarized as follows;-
  - a. That she is a house wife and lives in Bamburi.
  - b. That she sought to rely on her statement/affidavit already filed in court together with all the annexures.
  - c. That the Tenant runs a salon and cosmetics business in the suit premises where she has been for a period of over thirteen (13) years paying the rent of Kshs. 13,000/= per month.



- d. That the Tenant has sublet the premises without the consent of the Landlady.
  - e. That the Landlady would like to use the suit premises as a residence and for business.
  - f. That the notice to terminate tenancy was served upon the Tenant.
  - g. That the Tenant has vacated the premises but a few of her things are still at the premises. The Landlady therefore prayed that the tenancy be terminated.
4. Upon cross examination by Counsel for the Tenant, (Mr. Mathare), the Landlady's responses may be summarized as follows;-
- a. That the tenancy existed during the life time of the Landlady's deceased husband though the same was not written.
  - b. That it is the Landlady who collected the rent deposit from the Tenant.
  - c. That the Landlady is not aware of the alleged goodwill of Kshs. 150,000/= paid by the Tenant.
  - d. That the Tenant renovated the premises without the consent of the Landlady and further proceeded to sublet the same to one Mr. Muthuri who has not yet taken up possession of the premises.
  - e. That the Tenant needs to do a tailoring job in the premises.
  - f. That the parties do not have a rent dispute.

#### **The Tenant's case**

5. The evidence of the Tenant may be summarized as follows;-
- a. That she has been a Tenant in the suit premises for more than fourteen (14) years.
  - b. That there was a previous Tenant in the premises whom the Tenant herein paid a goodwill of Kshs. 80,000/=.
  - c. That the Tenant informed the Landlord that the premises needed power and renovations, the roof was leading and the Tenant bought iron sheets and repaired the same. In support of this, the Tenant produced receipts.
  - d. That the Landlady assured the Tenant that she would recover the costs of repairs from the goodwill.
  - e. That the Tenant does not object to vacating the suit premises but only wants to be paid back her investment of Kshs. 150,000/= or in the alternative be allowed to sell the business to another Tenant.
  - f. That all shops in the area "sell goodwill" after the Tenants vacate.
  - g. That the Tenant has not sublet the premises but has removed her goods therefrom.
  - h. That the Tenant is only interested in her costs and investment.
6. Upon cross examination by Counsel for the Landlady, the Tenant's responses may be summarized as follows;-
- a. That she paid the rent deposit to the deceased husband of the Landlady and since then, she has always paid rent to the Landlady.



- b. That the issue of the goodwill was an issue between the Tenant herein and the Tenant who was moving out.
- c. That the receipts that the Tenant sought to rely on do not have the name of the hardware shop nor do they have any revenue stamps.
- d. That the Tenant renovated the premises for her own business operations.

### **Analysis and determination**

7. After both parties had closed their respective cases, it was agreed by consent as follows;-
  - a. That the notice to terminate the tenancy is allowed/approved.
  - b. That the parties to submit only on the issue of goodwill payable, costs of renovations and costs of the suit.
  - c. That the Tenant to vacate the suit premises on or before 31.07.2024.
  - d. The parties to file submissions within fourteen (14) days.
8. The only issues that arise for determination in this case therefore are the following;-
  - a. Whether the Tenant is entitled to goodwill at the termination of her tenancy.
  - b. Whether the Tenant is entitled to be compensated for the cost of the alleged renovations on the suit premises.
  - c. Whether the Tenant is entitled to costs of this suit.

### **Issue A: Whether the Tenant is entitled to goodwill at the termination of her tenancy.**

9. The Tenant has stated in her evidence that before she took over the suit premises, there was another Tenant and whom the Tenant herein paid a goodwill of Kshs. 80,000/=. When cross examined by Counsel for the Landlady, the Tenant stated that the issue of the goodwill was an issue between her and the said Tenant. The Landlady under cross examination stated that she is the one who received the rent deposit from the Tenant and that further, the Tenant did not buy the business from any other Tenant. The Landlady stated that she knew nothing of the alleged goodwill of Kshs. 150,000/=.

Whether or not the Tenant paid the alleged outgoing Tenant the goodwill of Kshs. 80,000/= or Kshs. 150,000/= therefore becomes the word of the Tenant against that of the Landlady. It was the duty of the Tenant to prove this allegation and on the basis of the evidence presented by the Tenant, I do not find this issue proved on a balance of probabilities.

10. The Tenant testified that she was using the premises to conduct the business of cosmetics, salon and sale of clothes which she called DEERAS. It is clear from the evidence of the Landlady that she does not wish to carry out the same business as the Tenant. The Landlady clearly stated in her re-examination that the business she intended to operate is different from the Tenant's because she will not deal in cosmetics and DEERAS. Further, under paragraphs 9(d) and (e) of the Landlady's affidavit, and which affidavit the Landlady adopted as her evidence, it has been deposed as follows;-

9(d)- "Therefore, I intend to utilize half space of the rent premises to set up a tailoring shop for modern Swahili materials and outfits which I have been buying on a weekly basis from Tanzania and stored in my room. This will go a long way in enabling me fend for my family."



9(e) – “I intend to utilize the other half to create a single room to accommodate my adolescent male grand children who are in dire need of privacy.”

11. I do not therefore think any goodwill would flow from the Tenant’s business to the Landlady’s intended business and the Landlady cannot be said to be the beneficiary of the good name and reputation of the Tenant.

In the case of; Commissioner of Inland Revenue vs Muller & Co. Margarine Ltd [1900-1903] ALLER 413, cited in the case of; Rosemary Wakale vs Gideon Onyango Bendack [2018] eKLR, LORD MCNAUGHTEN defined goodwill as follows;-

“It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old established business from a business at its first start. The goodwill of a business must emanate from a particular center or source.

However, widely extended or diffused, its influence may be, goodwill is worthy noting unless it has power of attraction sufficient to bring customers home to the source from which it emanates.”

12. Besides the fact that the Landlady intends to carry out a different business from the Tenant and does not therefore stand to gain any custom from the Tenant’s business, it is also clear that by the time this matter came up for hearing, the Tenant had vacated the premises and in her own words, “the shop is already closed.” No goodwill would emanate from such a closed business.
13. In concluding this issue, it is therefore my finding that the Tenant has not established that she is entitled to any goodwill from the Landlady and this prayer is therefore dismissed.

**Issue B: Whether the Tenant is entitled to be compensated for the cost of the alleged renovations on the suit premises.**

14. The Tenant testified that she informed the deceased husband of the Landlady that the premises needed repairs. She further testified that she repaired the leaking roof and bought iron sheets for that purpose. The Tenant also testified that she connected power to the premises. It was her further evidence that the Landlady assured her that she would recover these costs from the goodwill. In the absence of any independent evidence, it is difficult to establish whether it is indeed true that the Tenant informed the deceased husband of the Landlady that she would recover her repair costs from the goodwill or whether indeed the Tenant informed the Landlady that she was going to repair the premises. It is even more difficult to state with certainty that indeed the deceased husband of the Landlady consented to the Tenant renovating the premises. I say this because the Landlady has stated in her evidence that the Tenant carried out the renovations without involving the Landlady.
15. I have carefully perused the record and I have not seen any evidence establishing that the Tenant obtained the consent of the Landlady to renovate the premises. In the absence of such consent, the Tenant is not entitled to compensation for the renovations.

In this regard, Section 12(1)(L) empowers the Tribunal;

“To award compensation for any loss incurred by a Tenant on termination of a controlled tenancy in respect of goodwill and improvements carried out by the Tenant with the Landlady’s consent.”



16. Other than the fact that the Tenant did not obtain the consent of the Landlady in renovating the premises, the Tenant under cross examination stated that the receipts
17. he sought to rely on did not have the name of the hardware from which the renovation/repair items were bought. Most importantly, the Tenant stated that she renovated the suit premises for her own business operations.
18. On this issue, I again, do not find that the Tenant is entitled to compensation for the alleged repairs and her claim for compensation in this regard is dismissed.

**Issue C: Whether the Tenant is entitled to costs of this suit.**

19. The Landlady being the successful party in these proceedings, she would ordinarily be the party entitled to costs. But I have taken into account the fact that the Tenant conceded to the notice to terminate tenancy at the earliest opportunity and agreed to vacate the premises. In these circumstances, it is only fair that each party bears their own costs.
20. The upshot of this Ruling is that, the Tenant's claims for goodwill, cost of repairs and renovations and costs of the suit are hereby dismissed.
21. Each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 4<sup>TH</sup> DAY OF OCTOBER, 2024.**

**HON. CYPRIAN MUGAMBI - CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Mr. Kittu for the Landlady and in the absence of the Tenant and Counsel.

