



**Ngugi v Chege & another (Tribunal Case E143 of 2022)  
[2023] KEBPRT 18 (KLR) (Civ) (20 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 18 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E143 OF 2022  
A MUMA, VICE CHAIR  
JANUARY 20, 2023**

**BETWEEN**

**DAVID NGUGI ..... APPLICANT**

**AND**

**ESTHER NG'ENDO CHEGE ..... 1<sup>ST</sup> RESPONDENT**

**MARRYANNE WANJIRU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A. Parties And Their Representatives**

1. The tenant/applicant David Ngugi rented a piece of land Title Number Limuru/Kamirithu 587/64 to start and/ or construct a bar business from the 1<sup>st</sup> respondent.
2. The 1<sup>st</sup> respondent is the landlord and the owner of the land upon which the suit premises lie.
3. The 2<sup>nd</sup> respondent is the caretaker of the land upon which the suit premises lie.
4. The firm of Maina Makome & Company Advocates represents the 2<sup>nd</sup> respondent.

**B. The Background of The Dispute**

5. The tenant rented a piece of land to start and/or construct a bar business from the landlord at an agreed cost of Kshs 20,000.
6. The Tenant has been on the suit land for a period of 20 years and has always paid his rent religiously save for the month of February 2022 where the 2<sup>nd</sup> respondent reversed the money he sent to her on February 8, 2022.



7. On February 9, 2022, the tenant *vide* a reference and notice of motion application sought orders; that the respondents be restrained from breaking into the suit premises, evicting and harassing the tenant, increasing the rent from Kshs 20,000 to Kshs 40,000, allow the tenant to continue paying rent as usual and in any other manner interfering with the tenancy at the premises pending the hearing and determination of the application inter partes
8. Accordingly, this honourable tribunal allowed the application and granted the tenant prayers number 2, 3, and 4 pending the hearing and determination of the application. The tribunal further ordered the tenant to serve for hearing on March 23, 2022.

### **C. Claim And Defence**

9. The tenant rented the suit premises from the 1<sup>st</sup> respondent at an agreed rent of Kshs 20,000 and has been on the said premises for 20 years.
10. The respondent then issued a notice to vacate dated June 24, 2021 with a 3 months' notice starting on the October 18, 2022 to January 18, 2022.
11. That out of malice, the 2<sup>nd</sup> respondent has been harassing his staff and threatening him with eviction, thereby interfering with the smooth running of the business.
12. The 2<sup>nd</sup> respondent in the month of February 2022 went to the suit premises and verbally demanded that rent has increased from Kshs 20,000 to Kshs 40,000 and the tenant's efforts to resolve the matter amicably proved futile.
13. In response to the tenant's application the 2<sup>nd</sup> respondent *vide* a replying affidavit dated March 21, 2022 controverted the tenant's averments in the application.
14. The 2<sup>nd</sup> respondent avers that she is not the caretaker of the suit premises and nor is the 1<sup>st</sup> respondent the landlady of the suit premises. She states that she is a duly appointed trustee of the piece of land on which the suit premises lie, being part of the estate of John Chege Nduati (Deceased) and has been subsequently issues with the title of the land to hold in trust for the beneficiaries.
15. Further, that neither is there a tenancy agreement nor has he paid any rent to the estate since 2011 and therefore is not a tenant in the suit premises.

### **D. Issues For Determination**

16. I have carefully considered all pleadings and evidence before me. I find that two key issues fall for determination;
  - a) Whether there exists a tenancy relationship between the applicant and the respondents
  - b) Whether the increase in the rent payable from Kshs 20,000 to Kshs 40,000 is justified

### **I. Whether there exists a tenancy relationship between the applicant and the respondents**

17. Pursuant to section 2 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishment\) Act](#) cap 301, there exists two forms of tenancy agreement: Written and oral or by implication.
18. In the present case, the tenant has been remitting a monthly rent of Kshs 20,000.00. This has not been disputed by the respondents.
19. In light of the above, while I note that there was no written tenancy agreement between the applicant and the respondent, a tenancy agreement exists by implication.



20. The applicant, therefore, is a tenant protected under the *Landlord and Tenant (Shops, Hotels and Catering Establishment) Act* cap 301, even though a sub-tenant.
21. The applicant, therefore, is a tenant protected under the *Landlord and Tenant (Shops, Hotels and Catering Establishment) Act* cap 301, even though a sub-tenant.

**II. Whether the increase in rent payable from Kshs 20,000 to Kshs 40,000 is justified.**

22. Section 2 of the *Landlord and Tenant (Shops, Hotels and Catering Establishment) Act* cap 301 gives this tribunal the mandate to vary or determine rent to be payable in respect of any controlled tenancy having regard to all circumstances thereof.
23. For 20 years, the tenant has been paying rent in the sum of Kshs 20,000. This amount has not been revised to take into consideration the particulars of the suit premises, its current market value, and the prevailing economic circumstances.
24. Further, the valuation report dated May 10, 2022 with an estimated rental income of Kshs 70,000 for the bar and Kshs 50,000 for the stalls has not been opposed by the applicant.
25. Additionally, it is clear that the suit premises has changed hands to beneficiaries and therefore, they need to have their own say as to its management. The rent increase from Kshs 20,000 to Kshs 40,000 is thus justifiable and reasonable.

**E. Orders**

26. For the reasons given above, I order as follows;
- a. Tenant to pay Kshs 40,000 from the date of filing this suit to the 2<sup>nd</sup> Respondent.
  - b. Tenant together with the other tenants (sub-leasees) negotiate new lease directly with the 2<sup>nd</sup> respondent.
  - c. 1<sup>st</sup> respondent to handover possession to the 2<sup>nd</sup> respondent on behalf of the beneficiaries of the estate of Nduati.
  - d. The 2<sup>nd</sup> respondent is granted leave to issue a fresh notice of 2 months to all tenants in the prescribed format should they be interested in evicting the tenants for purposes of selling the suit premises.

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES & RENT TRIBUNAL**

**Ruling dated, signed and delivered virtually by Hon. A. Muma this 20<sup>th</sup> Day of January 2023 in the presence of David Ngugi the tenant in person and Karoki for the Administrator and 2<sup>nd</sup> Respondent.**

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES & RENT TRIBUNAL**

