



**Mwaura v Onsinyo & 4 others (Tribunal Case 535 of 2022)
[2023] KEBPRT 32 (KLR) (17 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 32 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 535 OF 2022
A MUMA, VICE CHAIR
JANUARY 17, 2023**

BETWEEN

FRANCIS NJUGUNA MWAURA LANDLORD

AND

KEVIN MOMANYI ONSINYO 1ST TENANT

PATRICK MAINA 2ND TENANT

VICTORIA KAMENGERE KIMATU 3RD TENANT

PAUL MWANGI KIMANI 4TH TENANT

ANTONY MUGENDI 5TH TENANT

RULING

A. Parties and Representatives

1. The Applicant Francis Njuguna Mwaura instituted this suit as the Landlord of rented business spaces situate at property known as LR No 209/6829 (PART) Makongeni Estate, Nairobi. (herein after known as the Landlord)
2. The firm of M/S Kiaritha & Associates represents the Landlord/ Applicant.
3. The Respondents herein are Tenants of rented business spaces. (hereinafter known as the Tenants)
4. The firm of M/S Munyalo Muli and Company Advocates represent the Tenants/ Respondents.

B. The Dispute Background

5. The Landlord filed a reference to this Tribunal dated May 25, 2022. He also filed an Application supported by an affidavit sworn by himself on the even date.



6. The substratum of the dispute is that the Landlord instituted the instant suit after the Tenants disregarded the Landlord's statutory notices to terminate their tenancies. The Landlord also contends that the said Tenants have refused to pay rent for several years now and attempts to distress have been fruitless.
7. Further, the Landlord contends that the Tenants have also abused the temporary structures built in front of the Landlord's residence by blocking passages and drainages and that they are generally a nuisance to the Landlord who asserts that he stands to continue suffering irreparable loss and damage of use of his premises.
8. The Tenants filed a Replying Affidavit sworn by Kevin Momanyi Onsinyo on their behalf on July 28, 2022.
9. The Landlord filed a Replying Affidavit sworn by himself on October 3, 2022.
10. The Landlord also filed an Ex-Parte Application dated November 8, 2022 seeking police assistance to levy distress against the Respondents who refused to pay rent in spite of a court order stating the same.
11. The Landlord's filed a supplementary affidavit and submissions both dated September 5, 2022.
12. The 1st, 2nd, 3rd and 4th Tenants also filed their written submissions.
13. This Tribunal issued two sets of orders dated August 25, 2022 and November 11, 2022.

C. Jurisdiction

14. The Tenants challenge the jurisdiction of this Tribunal on the basis that there is no landlord-tenant relationship between the parties

D. The Landlord's Claim

15. The Landlord's contention is that the Tenants have disregarded his statutory notices to terminate their tenancies and have refused to pay rent for several years now. He further states that attempts to distress have borne no fruits.
16. He therefore sought that pending hearing and determination of the Application, the Respondents be prohibited and restrained from unlawfully using the Landlord's premises and interfering with the Landlord's alternative use and alteration of the premises.
17. He also sought that the Tribunal be pleased to issue an eviction and/ or a termination order against all the Tenants and costs of the Application be provided for.

E. The Tenants' Claim

18. In a Replying Affidavit sworn on behalf of all the Tenants by Kevin Momanyi Onsinyo on July 28, 2022, the Tenants contend that the Landlord's Application is premature, defective, incompetent, lacking in material facts, devoid of substance and it ought to be dismissed forthwith as it is an abuse of the court process.
19. The Tenants also contend that the Tribunal lacks the requisite jurisdiction to determine the dispute as there is no Landlord Tenant relationship between the parties.
20. The Tenants also claim that the Landlord has not demonstrated that he owns the premises.



21. The Tenants further claim that the structures complained of by the Landlord are actually built on a road reserve and they occupy the same at the mercies of the Kenya Urban Roads Authority.
22. The 3rd Tenant on her part claims that the Landlord is precluded from levying distress by a Court order which is annexed to the Affidavit sworn by Kevin Onsinyo.
23. The Tenants also state that the notice to terminate marked 'FN-4' is defective for lack of compliance with the law and cannot stand.

F. List of Issues For Determination

24. The issues raised for determination before this Tribunal are as follows;
 - a. Whether this Tribunal has jurisdiction to hear and determine this matter.
 - b. Whether the Notices to terminate the tenancies were valid and whether the Landlord is entitled to the remedies sought.

G. Analysis and Findings

Whether this Tribunal has jurisdiction to hear and determine this matter.

25. The jurisdiction of this Tribunal is spelt out in the provisions of the Landlords and Tenants (Shops, Hotels and Catering) Establishments Act, CAP 301 which regulates controlled tenancies.
26. From the documents on record it is clear that the suit premises are a controlled tenancy and none of the Parties have denied this fact. The issue of contention is whether there existed a landlord-tenant relationship between the Applicant and the Respondents.
27. In order to determine this, this Tribunal shall analyse the various documents that have been adduced by parties in the case.
28. The Landlord submitted an affidavit supporting his application dated May 25, 2022 and annexed a number of documents. In the Annexures marked 'FN-1' and 'FN-2', the Landlord has adduced copies of a Temporary Occupation License and a Single Business Permit to prove that he is indeed the bonafide Landlord of the premises.
29. He has also adduced copies of a number of letters addressed to the Director General of the Nairobi Metropolitan Services and a Police Abstract from Makongeni Police Station to prove that he made complains over actions of the Tenants to the relevant authorities.
30. In addition to proving that the business premises are under his control with the authority of the Kenya Railways Staff Benefit System and the Nairobi City County, the Landlord has also adduced evidence through MPESA statements to prove that the Tenants were indeed paying rent to him. Even, though the Tenants deny the existence of a landlord-tenant relationship, they have not adduced evidence to rebut the Landlord's claims.
31. This dispute is therefore well within the jurisdiction of this Honourable Tribunal the Tenant's vacation of the premises notwithstanding.

Whether the notices to terminate the tenancies were valid and whether the Landlord is entitled to the remedies sought.

32. Section 4 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* provides for the legalities to be followed when terminating a controlled tenancy or when altering the terms of a



controlled tenancy. The provisions on the issue of notice are clear that if a landlord intends to terminate a controlled tenancy, he should do so in accordance with the provisions of the Act.

33. Section 4(2) of the Act provides that:

' A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.'

34. Section 4(4) is also to the effect that the Notice can only take effect after two months of receipt by the receiving party and the notice must also specify the grounds upon which the requesting party seeks alteration of the terms. The receiving party on his part has to notify the requesting party after the date of receipt of the notice whether or not he agrees to comply with the notice.

35. In an analysis of the various Notices of Termination of Tenancy by the Landlord to the Tenants annexed to the Landlord's Supporting Affidavit, the Tribunal notes that the Notices for Antony Mugendi Njagi (dated November 30, 2021), Paul Mwangi Kimani (dated May 27, 2021), Paul Mwangi Kimani (dated October 21, 2020) and Victoria Kamengere Kimatu (July 31, 2020) were all to take effect immediately they were issued.

36. The rest of the Notices: For Victoria Kamengele Kimatu dated July 16, 2019, for Patrick Maina dated February 3, 2022 and for Kevin Momanyi Onsinyo dated September 1, 2021 were to take effect on September 1, 2019, March 1, 2022 and October 1, 2021 respectively.

37. All the notice periods in the aforementioned notices are not in compliance with the provisions of Section 4(4) of CAP 301. The provisions of that section require that the notice period be at least 2 months for none of the notices issued by the Landlord herein comply. For this reason, I find that the notices were not valid.

38. Even though the notices were not valid, the Landlord is still entitled to enjoy the right to property and the right to benefit from his property, therefore non-payment of rent by the tenants is inexcusable and an injustice to the Landlord. The Tenants are therefore prohibited from using the Landlord's premises without paying rent.

39. As for the issue of the Court Order annexed in the Affidavit of Kevin Onsinyo Sworn on July 28, 2022, the Tribunal cannot find a nexus between that Court order and the instant suit and even if they were connected, the procedures for bringing up such claims are provided for in the [Civil Procedure Act](#) and other laws.

E. Orders

40. Having made the analysis above, the Tribunal makes the following orders: -

- i. The Landlord's reference dated May 25, 2022 and application dated December 26, 2022 is merited and granted as prayed.
- ii. Tenants to pay all arrears immediately in default the Landlord shall be at liberty to continue with execution proceeding and obtaining vacant possession of the suit premises if they fail to clear rent arrears within 30 days.
- iii. The OCS Industrial Area Police Station or the OCS Makongeni Police Station to assist with compliance.



RUING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 17TH DAY OF JANUARY 2023 IN THE PRESENCE OF MULI FOR THE TENANT AND MWENDA FOR THE LANDLORD.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

