



**Njuguna v Munyui (Tribunal Case E741 of 2023)
[2023] KEBPRT 721 (KLR) (15 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 721 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E741 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
DECEMBER 15, 2023**

BETWEEN

PETER NG'ANG'A NJUGUNA TENANT

AND

PETER MBURU MUNYUI LANDLORD

RULING

A. The Dispute Background

1. The Tenant/Applicant moved this tribunal vide a reference dated 26th June 2023 under Section 12 (4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 complaining that the landlord had issued a notice of termination of tenancy which is inadequate and contrary to the tenancy agreement dated 1st October, 2019. In addition, the tenant states that he has transformed and developed the suit premises and stands to lose his investment and goodwill.
2. The tenant/applicant filed a Notice of Motion under a Certificate of Urgency dated 26th June, 2023 in which he sought the following orders; -
 - i. That the application be certified as urgent.
 - ii. That an order of injunction against the landlord, his agents and anyone claiming on his behalf, restraining him from evicting or interfering with his peaceful occupation be granted pending the hearing of the application.
 - iii. That an order does issue that the Landlord's notice to terminate/alter terms of tenancy issued to the tenant and dated 30th March, 2023 and served on 30th April, 2023 is declared invalid and is struck out.
 - iv. That the tenant be allowed to file a reference out of time.



- v. That the OCS Rweno Police Station do ensure compliance of the orders.
 - vi. That the costs of the application be borne by the landlord.
 - vii. That the honorable tribunal do grant any other order it deems necessary in the interest of justice.
3. The application is supported by an affidavit of even date in which the applicant/tenant deposes as follows; -
- i. That he is the tenant occupying the premises located at Plot No 17 Ruaka Township since July 2019 during which period he has observed all his tenancy obligations including payment of rent at Ksh. 15,000 monthly.
 - ii. That on or about 30th April, 2023, he received a Notice to terminate tenancy dated 30th March, 2023 with effect from 1st July, 2023. The said Notice is annexed as “PNN 1”.
 - iii. That the Notice is inadequate and contrary to the tenancy agreement dated 1st October, 2019 which provides for a notice period of 3 months. The tenancy agreement is annexed as “PNN 2”.
 - iv. That on 23rd June, 2023 he informed the landlord of his opposition to the notice.
 - v. That he has been conducting a bar business at the suit premises and that when he occupied the suit premises, it was in a dilapidated condition and he renovated the entire suit premises thus costing him Ksh. 400,000 which he is yet to recover. Bank transaction details are annexed as “PNN 4”
 - vi. That the notice is inadequate to allow him to detach the fixtures.
 - vii. That he purchased the business at Ksh. 250,000 and has built goodwill which he stands to lose and that as a result of the Covid-19 pandemic, there was loss of income and further opportunity to recover his investment was lost.
4. On 4th August, 2023, the tribunal issued orders of temporary injunction against the landlord pending the hearing and determination of the application.
5. The application is opposed vide a replying affidavit dated 14th September, 2023 in which the landlord/respondent deposes as follows; -
- i. That the applicant is indeed his tenant and that he moved into the bar much earlier but did not return the tenancy agreement which he was given to sign. That the agreement submitted by the applicant is doctored and the signature on the agreement does not belong to the respondent. A copy of the authentic tenancy agreement is annexed as “PMM 1”.
 - ii. That the tenant did not comply with the termination notice as per the law and did not file any reference as required by the law. A copy of a letter from the tribunal confirming that the tenant did not file any reference is annexed as “PMM 1(a)”
 - iii. That the landlord did not give the tenant any authority to carry out any repairs as alleged and that the suit premises were in good condition, were built and had furniture from the previous tenant who was running a bar. Photographs of the premises when he took over in 2010 are annexed as “PMM 2”. That he leased the premises to the tenant in the same state on 2020 and that if there are any changes done, it was without his authority and that he must restore the premises at his cost when he vacates.



- iv. That he has no knowledge of any alleged goodwill and has not received a penny from the applicant.
6. The tenant applicant filed a supplementary affidavit dated 22nd September, 2023 in which he deposes as follows; -
 - i. That the tenancy agreement annexed by the landlord/respondent is undated, unsigned and unknown to the tenant herein.
 - ii. That he sought leave to file a reference dated 20th June, 2023 out of time, reason being his advocates had received a notice to the effect that the tribunal was not sitting, therefore filing documents was a challenge. Copies of the notices are annexed as “PNN 2”.
 - iii. That within 2 months of receiving the notice, he informed the Landlord of his opposition to it via a letter dated 23rd June, 2023.
 - iv. That the tenancy agreement of 1st October 2019 in clause 5 duly allowed the tenant to paint and renovate the premises to his desirable design and in addition he received verbal consent from the landlord to renovate the premises in 2019.
 - v. That the goodwill was paid to the previous tenant of the premises.
 - vi. That he communicated to the landlord of his preference for a lease of 5 plus years in order to recover the capital investment and the time lost during the Covid protocols of 2020-2021.
7. The landlord in response filed a further replying affidavit dated 27th October, 2023.
8. The tenant filed a further affidavit dated 10th November, 2023 pursuant to leave granted at a court hearing on 27th October, 2023 and in response to the landlord’s further replying affidavit in which he reiterates the contents of both his supporting affidavit and supplementary affidavits.
9. In addition, the tenant in his further affidavit swears that the landlord/respondent herein disobeyed the court’s interim orders dated 4th August, 2023 when the landlord and his agents showed up at the suit premises on 16th October, 2023 and tore down the roof and tank and disconnected the water supply system. The tenant adds that he has incurred financial expenses as a result due to repairs but the water is still disconnected.
10. Both parties filed their respective written submissions with the tenant/applicant filing his dated 22nd September, 2023 and the landlord/respondent filed his dated 27th October, 2023.
11. We shall consider the submissions as we determine the issues for determination.

B. Issues for determination

12. The issues for determination are as follows; -
 - a. Whether the Notice to terminate tenancy dated 30th March, 2023 is valid.
 - b. Whether the tenant/applicant is entitled to the orders sought in the application dated 26th June, 2023.
 - c. Who shall bear the costs of the application?



Issue (a) Whether the Notice to Terminate tenancy dated 30th March, 2023 is valid.

13. In the case of *Manaver N Alibhai t/a Diani Boutique v South Coast Fitness & Sports Centre Limited* Civil Appeal No. 203 of 1994 it was held as follows: -

“The Act lays down clearly in detail, the procedure for the termination of a controlled tenancy. Section 4(1) of the Act states in very clear language that a controlled tenancy shall not terminate or be terminated and no term or condition in or right or service enjoyed by the tenant of any such tenancy shall be altered otherwise than in accordance with specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the tenant. The notice must also specify the grounds upon which termination is sought. The prescribed notice in form A also requires the landlord to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice.”

14. In the instant case, the Respondent/landlord issued a Notice to terminate tenancy dated 30th March, 2023 which is in the prescribed form.
15. The tenant/applicant claims that the notice to terminate tenancy is illegal based on the claim that the said notice contradicts the conditions of the disputed tenancy agreement dated 1st October, 2019, which provides for a period of notice of 3 months. The respondent on the other hand has sworn in his replying affidavit that the tenancy agreement exhibited by the applicant is doctored and that the tenancy agreement that he gave the applicant for signing was never returned.
16. A cursory look at the disputed tenancy agreements exhibited by both parties annexed as “PNN-1” and “PNN-2” which are similar, reveals as follows in paragraph number 1; -

“ 1. That the premises being let is a vacant room within land known as Plot No. T.17 Ruaka Market for a term of two years commencing 1st January, 2020 to 1st January 2022 with the option of renewal”

17. It Is clear that the written tenancy agreement expired on 1st January, 2022 and that the parties continued to have a landlord/tenant relationship after the expiry which still falls under the definition of a controlled tenancy. There being no dispute that the tenancy herein is a controlled tenancy, the parties ought to conform to the dictates of Cap 301 which states as follows in Section 6(1) of Cap 301-

“ 6
(1) A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal”.

18. The tenant wrote a letter to the landlord and his advocates dated 19th June, 2023 opposing the said notice. The tenant claims that he delayed to file a reference opposing the notice to terminate tenancy because his advocate received a memo from the tribunal dated 26th June, 2023 stating that the tribunal was not sitting from 26th June, 2023 until further notice. We note that the date in the said memo did not affect the period required for the tenant to oppose the said notice to terminate tenancy and therefore this tribunal has no option but to dismiss the complaint.



19. It is also not disputed that the tenant received the said notice to terminate tenancy on 30th April, 2023 which then means that the notice was bound to take effect 2 months from receipt of the notice which is 1st July, 2023.
20. There being no reference to oppose the Notice to terminate tenancy under Section 6(1) of [Cap. 301](#), we find that the Notice to terminate tenancy is valid and took effect under Section 10 of the said [Act](#).

Issue (b) Whether the tenant/applicant is entitled to the orders sought in the application dated 26th June, 2023.

21. The tenant approached this Tribunal fearing the possibility of an illegal eviction from the suit premises following the notice to terminate tenancy which he claims to be invalid.
22. We have determined above that the Notice to terminate tenancy is in accordance with [Cap 301](#) Laws of Kenya and therefore the orders of injunction sought in the application are not merited.

Issue (c). Who shall bear the costs of this application?

23. As regards costs, the same are in the Tribunal's discretion under Section 12(1)(k) of [Cap. 301](#), but always follow the event unless for good reasons otherwise ordered. We shall award costs to the landlord/respondent.

C. Orders

24. In conclusion, the following orders commend to us; -
- a. The Notice to Terminate tenancy dated 30th March, 2023 is hereby upheld and the tenant's tenancy in respect to Plot No 17, Ruaka Township is hereby terminated.
 - b. The application and reference dated 26th June, 2023 are hereby dismissed with costs.
 - c. Interim orders granted on 4th August, 2023 are hereby discharged.
 - d. The tenant shall vacate the suit premises within the next thirty (30) days hereof and in default shall be forcibly evicted therefrom by a licensed Auctioneer who shall be provided with security by the OCS Rweno Police Station.
 - e. Costs of Ksh. 25,000 to the Landlord/Respondent.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15TH DAY OF DECEMBER 2023.

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

.....

HON GAKUHI CHEGE

(MEMBER)

.....

In the presence of:



Gaita for Respondent/ Landlord

Ms Nekoye h/b for Lempa for Applicant/ Tenant

