



**Rongai Rhumba House v Arungu & 3 others (Tribunal Case
E149 of 2023) [2023] KEBPRT 288 (KLR) (Civ) (12 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 288 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E149 OF 2023
A MUMA, VICE CHAIR
MAY 12, 2023**

BETWEEN

RONGAI RHUMBA HOUSE TENANT

AND

SHEM ERIC ARUNGU 1ST RESPONDENT

CHARLES ARIWI 2ND RESPONDENT

MARGARET RIAROH 3RD RESPONDENT

KENYA POWER & LIGHTING CO. LTD 4TH RESPONDENT

RULING

A. Parties And Representatives

1. The tenant/applicant Rongai Rhumba House is the tenant and rented space on the suit property located at property title number Ngong/Ngong 15560 in Ongata Rongai. (hereinafter known as the 'tenant')
2. The firm of Ochil TLO & Associates represent the 2nd applicant/tenant in this matter.
3. The 1st respondent is the landlord and proprietor of the suit property. (hereinafter the 'landlord')
4. The 2nd respondent is the brother of the landlord and had rented out the suit property to the tenant.
5. The firm of Omas Omosa & Company Associates represent the landlord/respondent in this matter.



B. The Dispute Background

6. The tenant has filed a reference and application dated February 9, 2023 under section 12 (4) of the Landlords and Tenants (Shops, Hotels and Catering) Establishments Act Cap 301 seeking orders that the landlord be restrained from vandalizing the property and to reconnect electricity supply to the premises.
7. The landlord has filed a preliminary objection dated February 14, 2023 stating that the matter should be dismissed for being an abuse of the court process.

C. The Tenant's Claim

8. The tenant/1st applicant filed a reference dated February 9, 2023 seeking restraining orders against the landlord as well as orders that the landlord be prevented from vandalizing the premises.
9. The tenant/applicant also filed another application dated April 12, 2023 seeking orders that the 4th respondent be compelled to reconnect electricity, in opposition to a notice received from the landlord dated December 6, 2022.

D. The Landlord/respondent's Claim

10. The 1st respondent has filed an application dated April 10, 2023 seeking orders that the Tribunal restrain the tenant from trespassing onto the premises and that the court allow the 1st respondent to repossess the suit property.
11. The landlord/respondent has filed a preliminary objection dated February 14, 2023 seeking that the tenant's suit be thrown out for being an abuse of the court process.
12. They have also filed an application dated April 3, 2023 seeking that the 1st respondent be allowed to repossess the premises.

E. List Of Issues For Determination

13. The issues raised for determination are as follows;
 - a. Whether there is a Tenancy relationship between the parties
 - b. And whether the landlord is entitled to vacant possession pursuant to the termination Notice issued?

F. Analysis And Findings

Whether the Tenancy relationship between the parties was terminated?

14. The tenant and the landlord entered into a tenancy agreement in 2016 wherein the tenant was allowed to construct a business on the 1st respondent's property. The said lease was supposed to expire in 2021.
15. In the present suit the tenant has filed a reference and application claiming that the respondents vandalized the premises and that the 4th respondent illegally disconnected the electricity to the premises.
16. In response to the tenant's application and reference, the 2nd respondent has filed an application dated 3rd April in which they have admitted that the suit property belongs to the 1st Respondent. They have also stated that they entered into a tenancy agreement with the tenant while the 1st Respondent was out of the country. As such they had been the ones receiving the rent.



17. Upon informing the 1st respondent of the existing tenancy relationship, the landlord instructed them to terminate the tenancy since they intended to carry out some development on the property.
18. The 2nd respondent then proceeded to issue the tenant with a notice to terminate the tenancy. The notice was dated November 24, 2020 and was to take effect on March 1, 2021. The 2nd respondent has annexed an affidavit of service dated November 27, 2020 which shows that the said notice was duly served upon the tenant.
19. The landlord has also filed a notice of preliminary objection in which they present before this Tribunal that the institution of this suit before the Tribunal is an abuse of Court process since there is an existing suit in MCELS/E017/2023. And further the tenant like other tenants have vacated the premises. The tribunal sent an inspector who did report confirming no business was indeed on going tenant's items were destroyed by goons unknown to either party and electricity was not in the premises but one could tell there used to be a business of a bar.
20. I have perused the file and I take note that the main issue for determination is whether there exists a landlord-tenant relationship between the parties.
21. First, it is noteworthy that all parties do not dispute the fact that the suit property belongs to the 1st respondent. Additionally, they do not dispute that the tenancy was entered into between the tenant and the 2nd respondent who is the brother of the 1st respondent.
22. Having established this, I shall therefore proceed to inspect the validity of the notice that was served upon the tenant. Being a controlled tenancy, it goes without saying that the termination must follow the procedure outlined under section 4 of CAP 301 as follows;
 - 4(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall 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 the following provisions of this Act.
 - (2) 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.”
 - (4) No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, as shall be specified therein....
23. The Notice must accord the tenant a period of two months within which to vacate and must provide reasons for the termination. The notice issued by the 2nd respondent satisfied these requirements. The notice was served in November 2020 and was to take effect in March 2021, and it also provided reasons for termination one of which was that they intended to carry out some developments on the premises.
24. In an attempt to prove before the tribunal that the landlord actually wanted to carry out developments, the landlord has provided a joint venture agreement which also contains some building plans for the intended developments. This further convinces this tribunal that the landlord requires vacant possession of the premises.
25. From the annexed affidavit of service by the landlord I find that service of the notice to terminate tenancy was duly effected since there is no evidence presented by the tenant to the contrary. Additionally, the tenant did not ask to examine the process server to put to question the fact that service was duly effected.



26. In addition the tenant's reference was filed on February 9, 2023. The same was filed two years after the notice was served upon the tenant. Section 4(5) of CAP 301 clearly stipulates that upon receipt of the notice the tenant is required to respond within one month as to whether they intend to comply or not. The tenant also failed to file an application seeking to file the reference out of time or seeking an extension of time.
27. The Act is silent as to whether the Landlord is required to approach the tribunal to seek eviction orders in the event that the statutory period of two months has lapsed and that the party receiving the notice to terminate has failed to respond. As such it is only just to presume that at the time of filing the reference the tenancy had been duly terminated since the notice had taken effect and accordingly no landlord tenant relationship existed.
28. The tenant has presented before this Tribunal a letter dated February 8, 2023 as where they present that their property was vandalized. They have also annexed photographs which speak to the state of the premises currently. I have perused the said photographs and I am persuaded that the vandalization has left the premises in a dilapidated state and in my opinion no substantive business is being carried on or seems to be going on as confirmed by the Inspectors report left for this tribunal to ventilate on.
29. The mandate of this tribunal as outlined in Section 2 of CAP 301 is to deal with controlled tenancies regarding to Business Premises. The Tribunal in relation to this also has the power to determine whether such a relationship exists or not. Having analyzed the evidence brought by the parties, I am convinced that there is no landlord -tenant relationship between the parties. The notice to terminate took effect and the same was unopposed. Additionally, the state of the premises does not suffice as a business premise.
30. At the time of filing the reference the relationship had been effectively terminated and as such the tribunal does not rightfully have the jurisdiction to accord the tenant any remedies for the losses incurred in the vandalization which vandalisation could not be attributed to the landlord and or agents as it was stated the DCI was still investigating the same. The tenant's recourse therefore lies in other forums and not here.
31. In light of the above I proceed to order as follows;

G. Orders

- a. The upshot is that the landlord's preliminary objection dated February 14, 2023 is hereby upheld and The tenant's reference and application dated February 9, 2023 are struck out.
- b. The rent amounts paid by the tenant to the tribunal shall be released back to the tenant.
- c. The landlord shall have vacant possession of the suit premises.
- d. OCS Rongai to assist with compliance.
- e. Each party shall bear their own costs.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by Hon A. Muma this 12th day of May 2023 in the presence of Ms. Mwangi for the tenant and Ojwang for the 1st Respondent.



HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

