



**Maraswa v Nyokie (Tribunal Case E226 of 2023)
[2023] KEBPRT 1310 (KLR) (18 August 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1310 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E226 OF 2023
CN MUGAMBI, CHAIR
AUGUST 18, 2023**

BETWEEN

HASSAN TAJEU MARASWA APPLICANT

AND

PHILIP OLE NYOKIE RESPONDENT

RULING

Introduction

1. The tenant's notice of motion dated 27.2.2023 seeks orders that the Respondent be ordered to re-open the suit premises failing which the Applicant be at liberty to break into the same and gain access therein with the assistance of the OCS Namanga Police station. The application also seeks orders restraining the Respondent from interfering with the tenant's occupation of the suit premises in any manner howsoever.
2. The tenant's affidavit in support of his application sworn on 27.2.2023 may be summarized as follows:-
 - a. That the Applicant is the Respondent's tenant in the suit premises paying a monthly rent of Kshs 8,000/= and upon securing the tenancy, the tenant also paid a deposit of Kshs 8,000/=.
 - b. That the tenant's rent dues are paid fully and are up to date.
 - c. That on 21.2.2023, the Respondent locked the suit premises without a court order.
 - d. That the tenancy between the parties herein is a controlled tenancy which cannot be determined without leave of the Tribunal.
 - e. That the Tenant/Applicant has heavily invested in the suit premises and it is his only source of income.



The Landlord's Depositions

3. The Respondent's replying affidavit may be summarized as follows:-

- a. That on 2.6.2021 the Respondent entered into a lease agreement over the suit premises with one Eva Morisiet Tonkei.
- b. That as at the time of renting out the premises, the Respondent had in his possession the assorted items listed under paragraph five (5) of his replying affidavit.
- c. That the rent earlier agreed on at Kshs 8,000/= was to be increased to Kshs 10,000/= "to the end of January 2023" (*sic*).
- d. That as at the time the said Eva Morisiet left the premises, she owed the Respondent Kshs 204,000/= in rent arrears and Hire of equipment.
- e. That the said Eva Morisiet sublet the suit premises to the tenant without the consent of the landlord/Respondent.
- f. That the Applicant herein started threatening the other tenants as a result of which the Respondent requested Ms. Eva Morisiet to remove the Applicant from the suit premises.
- g. That on 16.1.2021, the Respondent wrote a whatsapp message to the Applicant asking him to vacate the suit premises within 14 to 21 days, the Respondent also informed Ms. Eva but she took no action.
- h. That on 21.2.2023, the Applicant threatened Solomon Maluki and his wife telling them they should vacate the suit premises and go back to where they came from since they are not Masais.
- i. That the action of the Applicant led the Respondent to lock the suit premises as he did not want his premises to be turned into a crime scene.
- j. That the Respondent reported the incident to the police.
- k. That the Respondent's attempts to open the premises were unsuccessful as the Applicant's lock was also on the door but the Respondent proceeded to open the same anyway, in the presence of the police.
- l. That upon opening the premises, the Respondent realized that some electrical wires were disconnected and the premises was almost burning up.
- m. That further, upon opening the premises, there was nothing found inside apart from the Respondent's items which he had hired out to "them" and for which they had not paid a single coin.

Analysis and Determination

4. The issues that arise for determination in this matter are in my view, the following:-

- a. Whether there exists a landlord/tenant relationship between the parties herein;
- b. Whether the tenant is entitled to the orders sought in his application



Issue A

5. Though the Applicant states that he is a tenant in the suit premises, he does not indicate when he became such tenant. The tenant has not disclosed how he came to be in the suit premises and I have not seen any evidence of rent payment by the tenant/Applicant to the Respondent. The Respondent on his part has clearly stated that one Miss Eva Morisiet who was her tenant sublet the suit premises to the Applicant without the consent of the Respondent. The Applicant has not in anyway sought to comment on these depositions by the landlord. He has not denied that the suit premises was let out to him by one MS. Eva Morisiet without the consent of the landlord. The landlord's deposition to that effect being unchallenged, I do find that the tenant herein if he got any tenancy of the premises at all, it was secured irregularly and illegally as the said Ms. Eva Morisiet had no capacity to let out the said premises without the consent of the landlord. At most, the Applicant's occupation of the suit premises was illegal and the Applicant a trespasser therein.
6. From the material placed before me, there is nothing to demonstrate that the Respondent herein ever accepted or acquiesced to the Applicant being his tenant. There is further no evidence on the record demonstrating that the landlord accepted any rent from the tenant.
7. Consequently, it is my finding that there does not exist and has never existed any landlord/tenant relationship between the parties herein and as such, the Tribunal has no jurisdiction to hear and determine this matter.
8. In view of the above finding, the Applicant is not entitled to the prayers sought in his application and the said application and reference herein are dismissed for want of jurisdiction with costs to the Respondent.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 18TH DAY OF AUGUST 2023

HON. CYPRIAN MUGAMBI

CHAIRMAN

18.8.2023

In the presence of:-

Ms. Mwadumbo for the Landlord

Ms. Ayugi for the tenant

