



**Omacho v Soi (Tribunal Case E129 of 2023)  
[2023] KEBPRT 1164 (KLR) (8 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1164 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E129 OF 2023  
CN MUGAMBI, CHAIR  
DECEMBER 8, 2023**

**BETWEEN**

**WILFRED OMACHE ..... TENANT**

**AND**

**MARGARET SOI ..... LANDLADY**

**RULING**

1. The tenant's application dated 21.7.2023 seeks orders that the Respondent be restrained from illegally evicting the Applicant from the suit premises, that the Respondent be ordered to reconnect the electricity supply to the suit premises, that the illegal notice issued by the Respondent be declared null and void. The Applicant has also sought the assistance of the OCS, Kaptembwa police station in ensuring compliance with the orders sought in the application. Costs have also been prayed for.
2. The Respondent has also filed a notice of preliminary objection dated 11.9.2023 on the grounds:
  - a. That the Tribunal lacks jurisdiction to hear and determine the application and the reference filed by the Applicant.
  - b. That the application offends Section 2 of Cap 301 as the application was brought to court when the Applicant was not in the premises that is Block LR No. 3 plot No. 418 Nakuru West.
  - c. That the application offends Article 159(2)(c) of *the Constitution* of Kenya and clause 25 of the lease agreement of 12.2.2019 which provides for a dispute resolution mechanism that the Applicant has not exhausted.
3. I will deal with the preliminary objection and the application together in this ruling seeing that all parties have filed their responses.



### **The Tenant's depositions**

4. The tenant's affidavit in support of her application may be summarized as follows:-
  - a. That the Applicant is a tenant of the Respondent paying a monthly rent of Kshs. 5,000/=.
  - b. That the Respondent has been harassing and threatening the tenant and on 10.6.2023, the Respondent issued an illegal notice to the tenant to vacate the suit premises within fourteen (14) days.
  - c. That the tenant runs a car wash business in the suit premises.

### **The Respondent's depositions**

5. The Replying affidavit sworn by the Respondent on 7.8.2023 may be summarized as follows:-
  - a. That the tenant has never been the landlord's principal tenant in the suit premises as the suit premises was rented by the late M/S Nora Michoro Anyona.
  - b. That it is the deceased Nora Michoro Anyona who sublet the premises to the tenant as a sub-tenant paying a monthly rent of Kshs. 5,000/-. The Respondent gave her approval for the sub-lease arrangements between the deceased and the tenant.
  - c. That the Respondent has never rented out her premises in portions.
  - d. That under the provisions of Section 7(e) of [Cap 301](#), the Respondent has the right to get back the portion previously sublet.
  - e. That the tenant has fraudulently reconnected electricity to continue with his business despite the superior tenancy having been distinguished (sic).
  - f. That the Respondent has changed the power connection for the premises.
  - g. That the rent of Kshs. 5,000/= paid by the tenant is not sustainable for a premises which was being let out for Kshs. 25,000/=.
6. The Respondent has deposed in her further affidavit that the agreement between her and the deceased Nora Michoro Anyona made provision for a preliminary channel of resolving disputes arising out of the tenancy relationship making this suit premature and ill advised.

### **Analysis and determination**

7. The issues that arise for determination in this application are in my view the following:-
  - a. Whether the Tribunal has the jurisdiction to hear and determine this matter.
  - b. Whether the tenant is entitled to the orders sought in his application.

### **Issue A**

8. It is admitted by the Respondent that the Applicant herein was her sub-tenant pursuant to a sub-tenancy agreement between the Applicant and the late Ms. Norah Michoro Anyona and which sub-tenancy the Respondent approved. The basis of objection to jurisdiction by the Respondent is the allegation that the tenant was not on the premises when he brought the suit to court. With respect, I have not seen any material in support for this allegation as the only deposition on the record relevant to this issue is that the tenant runs a car wash business in the premises.



9. Even the “Residential lease agreement” exhibited, between the Respondent and the deceased Norah Michoro Anyona sets out the term as “a term beginning on 12.2.2019 and continuing month to month...”

Although the lease agreement between the Respondent and the deceased was for a residential premises, the Respondent and the deceased allowed the Applicant herein to use a portion of the premises for carrying out the business of a car wash. This is certainly not residential and seeing that this sub tenancy was not reduced into writing, the applicant herein is in a controlled tenancy and therefore a protected tenant. On this issue, I therefore do find that the Tribunal has the jurisdiction to hear and determine this matter.

## Issue B

10. The notice that the tenant complains to be illegal is the one dated 10.6.2023; and marked as exhibit WF01. It reads as follows:-

To Mr. Wilfred Omache

Re: Notice to vacate the Car Wash

I am writing you this notice regarding the above subject. I am giving you one month notice from 10<sup>th</sup> June 2023 to 16<sup>th</sup> July 2023 to quit and vacate in vacant possession (sic).

Failure to vacate, legal action will be taken against you at your own costs.

Thank you.

Signed

Margaret Soi

11. It is clear that the Respondent recognized the Applicant as a tenant even though a sub-tenant. The tenancy between the parties having been declared to be a controlled tenancy, the Respondent was obligated to comply with the provisions of Sections 4(2) and 5 of [Cap 301](#) in seeking to terminate the Applicant’s tenancy. In this regard, Section 4(2) of [Cap 301](#) provides as follows:-

“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 if under such a tenancy shall give notice in that behalf to the tenant in the prescribed form. Section 5(1) of [Cap 301](#) also provides as follows:-

“Where the landlord is himself a tenant, the termination of the landlord’s tenancy shall not of itself terminate a controlled sub-tenancy, but for the purposes of this Act, the person entitled to the interest in reversion expectant on the termination of the landlord’s tenancy shall be deemed to be the landlord of the controlled sub-tenancy upon the terms and conditions thereof and subject to the provisions of this Act.”

12. The Respondent in this case was therefore required by the law to issue the notice to terminate the tenancy under the provisions of Section 4 of Cap 301 as read together with Section 5 of the same Act. The notice issued by the Respondent to the tenant is clearly issued in violation of Section 4(2) and 4(5) of [Cap 301](#) and is therefore of no legal consequence.
13. The Respondent has also deponed that the suit by the tenant is premature for the reasons that the agreement between the deceased and the Respondent provided for a preliminary manner of resolving any disputes arising from the lease. I do not think the current dispute necessarily arises from the



lease between the deceased and the Respondent herein. Secondly, any such condition precluding the provisions of [Cap 301](#) is void as clearly spelt out under the provisions of Section 3(6) of [Cap 301](#).

14. The Respondent has admitted to interrupting the tenant's power supply due to what the Respondent terms fraudulent connection of electricity by the tenant. I have not seen any evidence of the alleged illegal acts or fraudulent connection of electricity supply by the tenant. In the circumstances, the disconnection of electricity supply to the tenant is not only malicious but patently illegal.
15. I am also of the view that the argument by the Respondent that she is entitled to terminate the tenancy under the provisions of Section 7(d) [Cap 301](#) can only be tenable where the said ground is presented as a ground for termination of the tenancy in a notice issued under Section 4(2) of [Cap 301](#) and not as a ground generally stated in an affidavit. Section 4(1) of [Cap 301](#) states that controlled tenancies can only be terminated in the manner provided for under the Act.

### **Disposition**

16. In view of the foregoing, it is my finding that the Applicant's/tenant's application dated 21.7.2023 has merits and I allow the same in terms of prayers 3, 4 and 9 thereof. The tenant will also have the costs of the application.
17. The complaint by the tenant raises the same issues that I have already determined hereinabove. Consequently, the reference/complaint by the tenant is allowed in the terms set out under paragraph 16 above, the tenant shall also have the costs of the reference.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8<sup>TH</sup> DAY OF DECEMBER 2023.**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

