



**Makori v Nyambare (Tribunal Case E1174 of 2022)
[2023] KEBPRT 433 (KLR) (Civ) (18 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 433 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E1174 OF 2022
A MUMA, MEMBER
JULY 18, 2023**

BETWEEN

RUTH MAKORI APPLICANT

AND

DOMINIC NYAMBARE RESPONDENT

RULING

A. Parties and Representatives

1. The Applicant Ruth Makori is the tenant and had rented space for business in the suit property stalls no. 1 and 2 along Embakasi Utawala Road (hereinafter the “Tenant”).
2. The firm of P.K Njiiri & Company Advocates represents the Tenant in this matter.
3. The Respondent Dominic Nyambare is the Landlady and the owner of the suit property and had rented out the space on the suit premises to the tenant.
4. The firm of C.M Ongoto & Company Advocates represents the Landlord in this matter.

B. Background of the Dispute

5. The Applicant/Tenant entered into an oral lease agreement with the Landlord in June 2022. The Tenant has been running a restaurant business in the two premises, stall 1 and 2 situate along Embakasi Utawala Road.
6. The Tenant alleged that the Landlord of the said premises had illegally locked her business premises denying her access to her business. She further averred that the Landlord had threatened to illegally evict her without issuing a proper notice.



7. Consequently, the Tenant filed a Reference dated 13th December, 2022 seeking the intervention of this Honorable Tribunal.
8. The Tenant avers that the actions of the Landlord have caused irreparable loss.

C. The Tenant's Claim

9. The Tenant avers that she had rented out the Respondent's space, stalls no. 1 and 2 which are situated along Embakasi Utawala Road, within Nairobi County.
10. She avers that she has been running a restaurant business since June 2022 until 2nd December 2022 when the Landlord/ Respondent issued her with an illegal notice to give vacant possession.
11. The tenant further avers that on 8th December 2022 the Landlord disrupted the Tenant's business by hiring goons who attempted to evict her. She also avers that on 9th December 2022 the Landlord locked the premises with a padlock and as a result denying her access to the premises.
12. Additionally, the Tenant states that on 10th December 2022 the Landlord invaded the premises with some goons who demolished an extension that the Tenant had erected and also took away iron sheets and the restaurant's signage.
13. It is the Tenant's case that she has not been served with a proper notice because the time given is insufficient and the reasons advanced are not valid.

D. The Landlord's Claim

14. It is the Landlord's case that the Tenant has been illegally occupying stall no. 2 without his consent or any written agreement. He avers that subject to the oral agreement entered between him and the tenant, the tenant was to only occupy stall No. 1.
15. The Landlord avers that he was granted the space on a temporary basis with the condition that he was not to construct any extensions. He states that this were facts well known to the Tenant.
16. The Landlord states that the Tenant still went ahead and constructed an illegal structure, actions which are in breach of the verbal terms and conditions. The erected structure has obstructed the businesses of the other tenants.
17. The Landlord denies hiring goons to invade the premises and evict the tenant at all occasions as stated by the Tenant.
18. The Landlord states that the Tenant should vacate in order to ensure that he does not lose his temporary occupation license.
19. The Landlord also avers that the Tenant does not pay rent and is too arrogant and abusive.

F. Jurisdiction

The jurisdiction of this Tribunal is not in dispute.

F. list of issues for determination

20. The issues raised for determination are as follows;
 - a) Whether the Notice to Terminate tenancy issued by the Landlord and the reasons advanced are legal and should be upheld?



F. Analysis & Determination

21. The Reference filed by the Tenant/Applicant raises fundamental issues discussed herein below:
- Whether the Notice to Terminate tenancy, issued by the Landlord and the reasons advanced are legal and should be upheld?

Section 4(2), of the Land and Tenant (Shops, Hotels and Catering Establishments) Act Chapter 301 Laws of Kenya states that:

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. No tenancy shall take effect until such date, not being less than two months after the receipt thereof by the receiving party.

Section 4(4) of the Act provides that a notice shall take effect not being less than two months after the receipt thereof by the receiving party.

22. From the foregoing, it is clear that a notice to terminate or alter the term of a controlled tenancy must be issued not less than two months to the tenant and the same must indicate valid reasons for such termination.
23. The evidence tendered before this Honourable tribunal by the Tenant indicates that the Landlord issued an oral notice to vacate on 2nd December 2021. She was however not informed when the same was to take effect. On 8th December, 2022, the Tenant claims that the Landlord hired goons to disrupt her and evict her from the suit premises. This is six days after the said notice had been issued which is in blatant violation of section 4 (4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#)
24. I however note that the Tenant in her Further Affidavit dated February 3, 2023 acknowledged that the Landlord issued a notice in the proper form annexing the same for this Honourable Tribunal. The same is dated 16th January, 2023 and it was to take effect on 16th March, 2023. The said notice takes effect after a period of two months which is pursuant to section 4(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#). The notice was filed during the subsistence of the suit and as such, the Landlord has no authority to issue a notice. The notice is therefore not valid.
25. On the grounds issued by the Landlord, section 7 of the [Land and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Chapter 301 Laws of Kenya provides for the grounds on which a landlord may seek to terminate tenancy. Section 7(c) permits a landlord to issue a notice where the tenant has committed other substantial breaches of his obligations under the tenancy or for any other reason connected with the tenant's use or management of the premises comprised in the tenancy.
26. The Tenant has not denied erecting a structure on the premises. The same was done without the Landlord's consent amounting to a substantial breach of her obligations under the tenancy. The Landlord further avers that the illegal structure constructed by the Tenant has obstructed the businesses of other tenants. The Landlord has annexed the same as evidence produced before this tribunal. The other tenants have also on several occasions complained of smoke emissions distracting them from their businesses. Orders
- The upshot is that the Tenant's Reference dated 13th December 2022 is partially merited save for her various actions that would have warranted an eviction had the notice been valid.
 - The Landlord is at liberty to issue a fresh notice and serve immediately.



- c. The Tenant does remove any illegal structures obstructing other tenants businesses in the interim.
- d. Each party to bear its own costs.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by Hon A. Muma this 18th Day of July 2023 in the presence of Kariuki Njiri for the Tenant and in the absence of the Landlord.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

