



**Wambui v Njoroge & another (Tribunal Case E1275 of 2023)  
[2024] KEBPRT 854 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 854 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E1275 OF 2023  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
JUNE 12, 2024**

**BETWEEN**

**LUCY WAMBUI ..... TENANT**

**AND**

**ANNE WAMBUI NJOROGE ..... LANDLORD**

**AND**

**AZIEL CAPITAL AGENCY LIMITED ..... AGENT**

**RULING**

1. The tenant moved this Tribunal under Section 12(4) of Cap. 301, Laws of Kenya through a reference dated 19<sup>th</sup> December 2023 claiming that the landlord had issued her with an unlawful notice to vacate the suit premises situate on L.R NO. NGUNDU/BLOCK R024, NAIROBI by 31/12/2023. This was despite the tenant having paid rent in full and fulfilling all her obligations under the tenancy agreement.
2. She also complained that the landlord intended to evict her unlawfully and dispose off her assets without serving a valid termination notice under the provisions of Cap. 301, Laws of Kenya. She feared that the landlord would switch off water and electricity supply to her business premises. She moved therefore moved Tribunal to investigate the Complaint and make necessary orders including injunction to stop her and the agents from interfering with her enjoyment of the suit premises.
3. The tenant simultaneously filed a motion dated 19<sup>th</sup> December 2023 seeking restraining orders against the tenant in line with her Complaint pending hearing and determination of the application and reference.



4. The impugned termination notice is attached to the tenant's supporting affidavit sworn on 19<sup>th</sup> December 2023 as annexure 'LW3'. She also repeats the allegations set out in the Complaint in support of her application.
5. Interim orders were issued on 21<sup>st</sup> December 2023 restraining the respondents from evicting the tenant, switching off electricity or in any other manner interfering with her rights in the suit premises pending hearing of the application inter-partes.
6. On 10<sup>th</sup> January 2023, the tenant filed yet another application complaining that the respondents had failed to honor the orders served upon them and therefore sought that the OCS, Dagoretti Police Station does enforce compliance thereof. The application was directed to be served for hearing inter-partes.
7. On 16<sup>th</sup> January 2024, the 1<sup>st</sup> Respondent/Landlord sought for stay of execution of the ex-parte orders issued on 5<sup>th</sup> January 2024 pending hearing and determination of the application. She also sought for restraining orders against the tenant from executing the ex-parte orders delivered on 5<sup>th</sup> January 2024 whether by police assistance or otherwise pending the hearing and determination of the application. She also sought for setting aside of the ex-parte orders issued herein and that she be allowed to file her defence in the matter and that the matter proceeds to hearing de novo.
8. The application is supported by the affidavit of her advocate one Webster Kimathi sworn on 16<sup>th</sup> January 2024. The affidavit alludes to the proceedings which took place in this matter on 5<sup>th</sup> January 2024 without his participation. The said proceedings were conducted in the presence of the tenant's Counsel and the landlord in person. The landlord indicated that she had no objection to the orders sought. As such, the application dated 19<sup>th</sup> December 2023 was allowed in terms of prayer 3. Consequently, the reference was marked as settled in terms.
9. On 27<sup>th</sup> March 2024, the 1<sup>st</sup> Respondent filed a replying affidavit wherein she denied that the 2<sup>nd</sup> Respondent was her agent in respect of the suit premises stating that Olive Joycare Estate & Property Managers Limited was her agent pursuant to a management agreement dated 4<sup>th</sup> July 2023 attached to her affidavit as annexure 'AWN-2'.
10. She accuses the 2<sup>nd</sup> respondent of meddling with the management of the property since death of her husband one Lawrence Njoroge Kamau who was a joint owner thereof. She deposes that there is a case pending in Kikuyu Law Courts vide Civil Case No. E246 OF 2023 in which she seeks for orders barring the 2<sup>nd</sup> respondent from meddling with the management of the suit property. As such, she blames any disobedience of the orders of 5<sup>th</sup> January 2024 upon the 2<sup>nd</sup> respondent. She further deposes that the tenant does not pay rent to her despite having been notified her to directly do so vide annexure marked 'AWN-3' dated 6<sup>th</sup> June 2023.
11. It is to be noted that the 2<sup>nd</sup> respondent failed to comply with orders given on 1<sup>st</sup> March 2024 granting it 7 days' leave to file and serve its response.
12. Despite being directed to file written submissions, none of the parties complied. We shall therefore proceed to determine the matter based on the materials on record.
13. The following issues emerge for determination in this matter;
  - a. Whether the tenant is entitled to the reliefs sought in the reference.
  - b. Whether the 2<sup>nd</sup> respondents notice to terminate tenancy dated 23<sup>rd</sup> November 2023 is valid.
  - c. Whether the 1<sup>st</sup> respondent's application dated 16<sup>th</sup> January 2024 ought to be allowed.



- d. Who is liable to pay costs of the suit?
14. It is not in dispute that the 2<sup>nd</sup> respondent issued a notice dated 23<sup>rd</sup> November 2023 upon the tenant seeking to terminate her tenancy in the suit property with effect from 31<sup>st</sup> December 2023. A cursory look at the said notice reveals that the same does not comply with Section 4(2) of Cap. 301 as it is not in the prescribed form neither does it comply with Section 4(4) thereof which stipulates a minimum period of two months.
15. Secondly, the landlord in her replying affidavit deposes that the 2<sup>nd</sup> respondent was not her agent and that it has been engaging in meddling with the suit property after the demise of her husband. The 2<sup>nd</sup> respondent did not file any response to the application and reference by the tenant despite being granted several opportunities to do so. In absence of any evidence to the contrary, we find and hold that the 2<sup>nd</sup> respondent had no capacity to terminate the tenant's tenancy as it purported to do and the notice issued by it is therefore null and void for all purposes.
16. In view of the foregoing observations and holdings, the application by the 1<sup>st</sup> respondent's application dated 16<sup>th</sup> January 2024 has no legs to stand on and is therefore a candidate for dismissal.
17. In regard to costs, the same are at the Tribunal's discretion under Section 12(1)(k) of Cap. 301, Laws of Kenya but always follow the event unless for good reasons otherwise ordered. We shall order the 2<sup>nd</sup> respondent to pay costs of the suit to the tenant and the 1<sup>st</sup> respondent having fermented the dispute through issuance of the illegal termination notice dated 23<sup>rd</sup> November 2023 in an act of meddling with the suit property without the authority of the 1<sup>st</sup> respondent.
18. In conclusion, the following final orders commend to us in this matter;
- The tenant's reference dated 19<sup>th</sup> December 2023 is allowed and the 2<sup>nd</sup> respondent is restraining from interfering in any manner with her occupation of the suit property situate on Title No. Dagorreti/Thogoto/4457 which is owned by the 1<sup>st</sup> respondent.
  - The 1<sup>st</sup> respondent's application dated 16<sup>th</sup> January 2024 is hereby dismissed for lack of merit.
  - The 2<sup>nd</sup> respondent's notice of termination of tenancy dated 23<sup>rd</sup> November 2023 is declared illegal, null and void.
  - The tenant shall pay her monthly rent to the 1<sup>st</sup> respondent and in default, the 1<sup>st</sup> respondent shall be entitled to use lawful means to recover the same without recourse to this Tribunal.
  - The 1<sup>st</sup> respondent shall allow the tenant peaceful occupation of the suit premises so long as she observes and preforms her obligations under the tenancy contract.
  - The OCS, Kikuyu Police Station shall ensure that peace and tranquility prevails in the suit premises in line with the foregoing Tribunal orders.
  - The 2<sup>nd</sup> respondent shall pay costs of Kshs 20,000/= each to the tenant and 1<sup>st</sup> respondent herein.

It is so ordered.

**DATED, SIGNED & VIRTUALLY DELIVERED THIS 12<sup>TH</sup> DAY OF JUNE 2024.**

**HON GAKUHI CHEGE.....PANEL CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON. JOYCE A. OSODO.....PANEL MEMBER**



## **BUSINESS PREMISES RENT TRIBUNAL**

In the presence of;

Mungla for 1<sup>st</sup> respondent/landlady

No appearance for applicant and 2<sup>nd</sup> respondent

