



**Weda v Anam & another (Tribunal Case 38 of 2018)
[2023] KEBPRT 27 (KLR) (1 February 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 27 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 38 OF 2018
A MUMA, VICE CHAIR
FEBRUARY 1, 2023**

BETWEEN

SAMSON NYAMWAJI WEDA LANDLORD

AND

STEPHEN ANAM 1ST TENANT

PHILIP OTIENO ABONDO 2ND TENANT

RULING

1. The Applicant Samson Nyamwaji Wada (hereinafter referred to as the “Landlord”) is the landlord and the proprietor of that demised premises erected on L.R. Number South Sakwa/Barkowino/4140.
2. The Landlord is in person in this matter.
3. The Respondents Stephen Anam and Philip Otieno Abondo (hereinafter referred to as the “Tenants”) leased the demised premises from the Landlord.
4. The Firm of Onyata & Company Advocates represent the Landlord in this matter.

The Dispute Background

5. The Landlord has moved this tribunal vide an application dated 22nd September 2021 seeking that the said application be certified urgent, that the orders of this tribunal dated 23.6.2021 be vacated as well as the costs of the application be awarded to him.
6. This application was certified urgent and the same heard interparties as per the orders of the tribunal dated 28th September 2021.



7. The Tenants have vehemently opposed the said application, contending that the same is untenable for the reasons given by the tenants in their Replying Affidavits, as well as the written submissions dated 31st July 2022.
8. The Landlord equally filed their submissions dated 19th May 2022 in support of the said application.
9. This tribunal pronounced itself on 20th December 2022 where it held that there was a need to conduct a Site Visit to get a better representation of the matter. The Site Visit was conducted on 30th December 2022.

List Of Issues For Determination

10. The issue before this Honourable tribunal is;

Whether the Landlord is entitled to the eviction orders sought?

Analysis And Findings

11. The Tribunal as per the Ruling delivered on 20th December 2022 established that there was a need to visit the premises to establish the status of the premises as well as have a better understanding of the matter.
12. Having made the visit myself certain issues became clear it was the Landlords testimony that the Tenants George and Philip approached the Landlord to build the empty plot and rent the same out and indeed presented a BQ of 371,000/- and he allowed them to build on the said property and gave them a 10 yr. lease and commenced business shortly after they sublet the premises when their businesses weren't doing well and they became head tenants.
13. It was the landlords testimony that inspite of having subtenants in the premises who paid higher rent than they did, they still defaulted forcing the landlord to seek redress at the Tribunal and indeed secured an order for eviction for non payment of rent on 26th November 2019 from the then chair Mbichi Mboroki. In April 2020 the tenants were evicted the landlord took over the premises together with the subtenants who later left due to the disturbances and he got others for close to two years he managed the property and during this period he claims that he undertook massive renovation of the premises.
14. The Head Tenants again moved the tribunal for a stay and reopening of the premises which was granted on 5th June 2020 by the chair as he then was, even though they had been evicted already, unable to secure possession they again moved this tribunal this time on 23rd June 2021 and without much facts I confirmed the last orders in the file of 5th June 2020 it is at this juncture that the head tenants moved and secured the property once more from the landlord taking over the tenants who were already there.
15. The Tenants Philip and George also testified and agreed with the landlord's sentiments that they had a 10-year agreement in 2014 after construction adding that their business having collapsed, they resorted to subtenants whom the landlord brought to them most of times. They restated the back and forth at the tribunal and in the magistrate court eventually taking over possession after 27 Months in May 2023 current rent is 23,000/- for Butchery and 25,000/- for BAT they currently pay the Landlord 8,000/- shillings. They claimed they spent around 900,000/- constructing which they are yet to recover. The only uninterrupted period was 2014 – 2020. The lease is set to end next year.



16. Section 7 of the [Act](#) clearly stipulates the grounds upon which a Landlord may seek to terminate tenancy. One of the grounds as enshrined in Section 7 (f) of the [Act](#) is: -

that on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises.

17. Additionally, in the case of *Fisher v Taylors Furnishing Stores Ltd* [1956] 2 All ER 78, it was stated that;

“There must, therefore, be an intention and it must be an intention which in point of time is related to the termination of the current tenancy. It seems to me that the intention must be to do one of the following things: (i) to demolish the premises comprised in the holding; or (ii) to reconstruct the premises comprised in the holding; or (iii) to demolish a substantial part of the premises comprised in the holding; or (iv) to reconstruct a substantial part of the premises comprised in the holding; or (v) to carry out substantial work of construction on the holding; or (vi) to carry out substantial work of construction on a part of the holding.

If the landlord prove an intention to do one of those things, and to do it on the termination of the current tenancy, he must then prove that he could not reasonably do it without obtaining possession of the holding.”

18. In the present case the Tribunal takes note of the fact that the Landlord has not provided any evidence in terms of approved building plans or proof of funds to prove their intention to renovate the premises. Be that as it may the Tribunal cannot turn a blind eye as to the state of the property and that the same requires renovation. The premises were in a deplorable situation yet in a prime location. The Landlord stated he has been approached by several financial institutions to finance the construction of the premises a statement which the tribunal believes because of the prime location of the building in Bondo town.

19. In determining the matter, the Tribunal wishes to rely on section 12 (4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Chapter 301 Laws of Kenya Act which provides as follows;

In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit.

20. The Tribunal wishes to exercise its discretion and allow both for renovation of the premises as well as eviction of the Tenant as per the stipulated procedure under [CAP 301](#). This will ensure that the interests of both parties are protected. In doing so the tribunal has also considered that rent variance by the Subtenants almost 50,000/- comparatively to what is paid to the landlord being 16,000/- from year 7 onwards. This has drastically increased from a parltry 2,000 when they constructed the building it is evident that the building costs have now been recouped by the head tenants as only one year is left of the 10-year lease.

21. In addition to the above, the Tribunal goes back to the eviction orders granted to the Landlord by the then Chair Hon. Mbichi Mboroki in 2019. The said orders allowed the landlord to evict the head tenants which he did and took back possession of the premises. It was not until the 5th of June 2020 that the Head Tenants sought to stay the aforementioned orders of eviction which attempts were not successful.



22. The head tenants then moved the Tribunal again and were granted orders on 23rd June 2021. I find that the period taken by the head tenants to file for stay of the eviction orders was unreasonably long and that by the time they acquired back possession of the premises, the orders had already taken effect for a period of two years.
23. As such I find it hard to establish that the tenancy relationship was substantively restored in 2021. The eviction had already been carried out by the Landlord and they had already moved on to acquire new sub-tenants. Seeing as the Head Tenants are not even currently in the premises, it is futile for me to order for continuance of the said relationship.
24. In light of the foregoing the Tribunal shall make the following orders;

Orders

- a) The upshot is that the Landlords Reference dated 4th June 2018 is hereby upheld in the following terms;
- b) The Head Tenants shall hand over vacant possession of the premises to the Landlord within 30 days being on or before 28th February 2023 after which rent shall be paid to the Landlord.
- c) The sub-tenants shall hand over vacant possession of the premises back to the Landlord in the next 2 months ie on or before end April 2022. Only if the landlord so directs.
- d) 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 1ST DAY OF FEBRUARY 2023 IN THE PRESENCE OF NYABUNDI FOR THE TENANT AND IN THE ABSENCE OF THE LANDLORD.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

