



**Kiangai v Ngura (Tribunal Case E161 of 2024)  
[2024] KEBPRT 1264 (KLR) (28 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1264 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E161 OF 2024  
CN MUGAMBI, CHAIR  
AUGUST 28, 2024**

**BETWEEN**

**JOHN KIANGAI ..... LANDLORD**

**AND**

**JONATHAN NGURA ..... TENANT**

**RULING**

**Introduction**

1. The Landlord's Application dated 1.07.2024 seeks orders that the Tenant immediately vacates the suit premises and declares vacant possession thereof and pays the rent arrears in respect of the property known as Plot No. XIV/138 Kingorani, Mwangeka street, apartment No. K-16 (hereinafter the suit property).

**The Landlord's depositions**

2. The Landlord's affidavits in support of his Application may be summarized as follows:-
  - a. That he has constructed a residential apartment in the suit property and has lent the same out for residential purposes.
  - b. That the Tenant who pays a monthly rent of Kshs. 14,000/= for the apartment has accumulated rent arrears of Kshs. 154,000/=.
  - c. That the Tenant failing to pay the rent requested to be allowed to stay on the suit premises on humanitarian grounds.
  - d. That after demands for the payment of the rent arrears were made to the Tenant, Counsel for the Landlord eventually issued the Tenant with a notice to vacate dated 15.5.2024 and which was to take effect as at 01.6.2024 to 30<sup>th</sup> June 2024.



- e. In response to the above notice, the Tenant requested to be paying Kshs. 6,000/= monthly.
- f. That after the lapse of the notice, the Tenant who continuous to default in the payment of rent, occupies the suit premises as a trespasser.

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

- 3. The Tenant's replying affidavit sworn on 25.7.2024 may be summarized as follows:-
  - a. That the Respondent is a Tenant of a residential one (1) bedroom flat paying a monthly rent of Kshs. 14,000/= and in the circumstances and in light of the admission by the Landlord, the Tribunal has no jurisdiction to hear and determine this matter.
  - b. That the alleged notice issued is defective and the Application is also defective for failure to be accompanied by a complaint.

### **The Landlord's Further deposition**

- 4. The Landlord's further affidavit may also be summarized as follows:-
  - a. That he has constructed a commercial premises in the suit premises.
  - b. That the Tenant operates the business of selling herbal products in the suit premises.
  - c. That a lease agreement was prepared and handed over to the Tenant but he declined to execute the said agreement.
  - d. That on 29.3.2024, the Landlord issued the Tenant with a notice to terminate tenancy which notice was duly received and acknowledged by the Tenant.
  - e. That the Tenant has not responded to the notice to terminate his tenancy in any manner.
  - f. That the suit premises is in disrepair.
  - g. That the user of the said premises is commercial even though the Tenant has illegally sublet the premises to persons unknown to the Landlord.
  - h. Tha the tenancy herein is a controlled tenancy and the notice to terminate tenancy has been issued in accordance with the provisions of Cap 301 of the Laws of Kenya.
  - i. That the Law allows the Landlord to terminate tenancy on account of the non-payment of rent and breach of the terms of the tenancy agreement.
  - j. That the notice dated 29.3.2024 is enforceable under Section 10 of Cap 301.

### **Analysis and determination**

- 5. The issues that fall for determination in this Application are the following:-
  - a. Whether the Tribunal has the jurisdiction to hear and determine this matter?
  - b. Whether the Landlord is entitle to the orders sought in his Application.

### **Issue A: Whether the Tribunal has the jurisdiction to hear and determine this matter?**

- 6. The Tenant's challenge to the jurisdiction of the Tribunal is based on the deposition by the Landlord at paragraphs 3 and 4 of the said affidavit where it is deposed as follows:



- 3 - That I have constructed a residential apartment in the suit property and have lent the same for residential purposes.
- 4 - that I knew the Tenant in the year 2014 when he was referred to me by my caretaker and the said Tenant herein requested for 3 bedroom apartment.
7. The same Landlord in his further affidavit sworn on 26.7.2024 has deponed as follows:-
- Paragraph 5: That I constructed a commercial premises, I attach herewith photos of the said premises.
- Paragraph 6: That on or about 1.04.2014, I knew the Tenant through my agent who requested me to lease him a part of the commercial suit premises for business purposes only.
- Paragraph 10: That the Tenant proceeded to enter into the premises and operated his business of selling herbal products.
8. I do note that the Tenant has not denied that he carries out the business of selling herbal produces in the suit premises. Other than relying on the Landlord's depositions in the first affidavit, the Tenant has not offered any contrary view to the Landlord's further affidavit. The Tenant has not suggested that he uses the suit premises for residential purposes either.
- I have also noted that there does not exist a written lease agreement over the suit premises even though a draft lease has been annexed to the Landlord's further affidavit. The said draft lease has not been executed by the parties and is therefore of no evidentiary value.
9. On this issue, I therefore do find that the suit premises is commercial as opposed to residential and further find that there being no written tenancy agreement between the parties, their relationship is that of a controlled tenancy and therefore the Tribunal has jurisdiction to hear and determine this matter.

**Issue B: Whether the Landlord is entitled to the orders sought in his Application.**

10. The Landlord has sought an order that the Tenant renders vacant possession of the suit premises failing which the Landlord be allowed to evict the Tenant. The Landlord's prayer is premised on the notice to terminate tenancy dated 29.3.2024. I have perused the said notice and I note that the same is dated 29.3.2024 and the date for termination is shown as 29.3.2024. I note at paragraph 6 the notice states; "That for the above reasons, you have two months from the date of this notice to vacate the suit premises."
- I do not think paragraph 6 reproduced above cures the express effective date of 29.3.2024 in the selfsame notice. I would hold the notice to be defective in so far as it declares itself effective on the same day it was prepared and for further not being specific of the date of termination (effective date) at paragraph 6 of the notice. And I so hold.
11. I have also perused the notice dated 15.5.2024 and I am satisfied that it does not amount to the notice to terminate tenancy referred to under the provisions of Section 4 of Cap 301. Infact, the notice dated 15.5.2024 seems to me to be a reminder of previous notices. Consequently, the notice dated 29.3.2024 and 15.5.2024 cannot be the basis of granting the orders of vacant possession as sought by the Landlord.
12. The Landlord has sought further orders that the Tenant be ordered to pay rent arrears in regard to the suit property. According to the Landlord, rent arrears have accumulated to Kshs. 154,000/= and continuous to accrue. The Landlord has exhibited demand letters for the payment of the rent and even



responses by the Tenant. The Tenant has not denied owing this rent to the Landlord and from the material placed before me, I am satisfied that indeed the Tenant owes the said rent.

### **Disposition**

13. In view of the above findings, I hereby make the following orders;-
  - a. That the Tenant's notice of preliminary objection dated 15.7.2024 is hereby dismissed.
  - b. That the Landlord's prayer for vacant possession and the eviction of the Tenant is declined.
  - c. That the Tenant owes the Landlord rent arrears amounting to Kshs. 154,000/= as at 5.06.2024.
  - d. That the Tenant is to pay the aforesaid rent arrears within the next thirty (30) days of this Ruling FAILING which the Landlord will be at liberty to levy distress against the Tenant for the recovery of the said rent arrears and any accruing rent.
14. The Complaint by the Landlord dated 1.07.2024 has been conclusively addressed by the findings and orders issued in this Ruling. Consequently, I allow the Complaint in the terms set out in paragraph 13 above.
15. The Tenant will bear the costs of the Application and the Complaint.
16. This file is hereby ordered closed.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF AUGUST, 2024.**

**HON. CYPRIAN MUGAMBI - CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Ms. Ondieki for the Tenant and Ms. Memia holding brief for Osoro for the Landlord

