



**Olenja v Olenja (Tribunal Case E142 of 2023)**  
**[2023] KEBPRT 1272 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1272 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**TRIBUNAL CASE E142 OF 2023**  
**CN MUGAMBI, CHAIR**  
**DECEMBER 19, 2023**

**BETWEEN**

**SHARON OLENJA ..... TENANT**

**AND**

**DR. MARY OMUTSANI ..... LANDLORD**

**RULING**

**Introduction**

1. The Tenant's application dated 8.2.2023 seeks orders of injunction restraining the Respondent from in any manner interfering with the tenant's tenancy at the premises located at Madaraka pending the hearing and determination of the suit. The Applicant has also sought the assistance of the OCS, Nyayo stadium police station in ensuring compliance with the orders issued by the Tribunal.

**The Tenant's depositions**

2. The Tenant's affidavit in support of her application may be summarized as follows:-
  - a. That the tenant has been the Respondent's tenant in the suit premises and has always paid rent as agreed between the parties.
  - b. That on 30.1.2023, the Respondent without any justification whatsoever demanded that the tenant vacates the suit premises by 1.2.2023. These demands to vacate were made to the tenant notwithstanding the fact that the tenant did not have any rent arrears.
  - c. That the Respondent has continued to interfere with the tenant's operations and the tenant is apprehensive that unless stopped by the Tribunal, the Respondent will continue her illegal activities.



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

3. The Respondent's replying affidavit sworn on 1.3.2023 may be summarized as follows:-
  - a. That the suit premises is a residential premises.
  - b. That the suit premises was let out to one Ziporah Okello who vacated without notifying the Respondent but continued to pay the rent through her cousin, the tenant herein.
  - c. That the Applicant is a stranger to the Respondent and there does not exist a landlord/tenant relationship between the parties.
  - d. That the tenant/Applicant has converted a residential premises into a business premises and is therefore guilty of material non-disclosure.
  - e. That the tenant does not have a license or permit to carry out business in the suit premises.
  - f. That in the above circumstances, the Tribunal has no jurisdiction to hear and determine this dispute.
  - g. That the application by the tenant ought to be dismissed for being an abuse of the court process.

### **Analysis and determination**

4. The only issue that arises for determination is whether the tenant is entitled to the orders sought in her application.
5. The Respondent herein has not challenged and/or responded to the tenant's complaint that on 30.1.2023, she demanded that the tenant vacates the suit premises on or before 1.2.2023. instead, the Respondent's response is majorly concerned with the views that there does not exist a landlord/tenant relationship between the parties and that the Applicant herein is a stranger to the landlord. The Respondent has further deponed that it is one Ziporah Oketch who is the rightful tenant but who has been paying rent through the Applicant herein.
6. The self-same issues were raised by the Respondent in her application dated 22.2.2023. By its ruling on the said application delivered on 13.7.2023, the Tribunal made the following findings;
  - a. That there exists a tenancy between the parties which has not been reduced into writing and is therefore a controlled tenancy within the meaning ascribed thereto by Section 2 of [Cap 301](#).
  - b. That the suit premises is a business premises.
  - c. That the Tribunal has the jurisdiction to hear and determine this dispute.
7. The tenancy between the parties having been found to be a controlled tenancy, then it follows that if the Respondent is desirous of terminating the same, she is bound to comply with the mandatory provisions of Section 4(2) of [Cap 301](#) which 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 under suit a tenancy shall give notice in that behalf to the tenant in the prescribed form.”
8. The Respondent has not denied that she on 30.1.2023 made demands that the tenant ought to vacate the suit premises by the 1.2.2023. This demand was not in writing and to the extent that it purported to



verbally terminate the tenancy herein, it fell short of the mandatory requirements of Section 4(1) and 4(2) of [Cap 301](#). The tenant is therefore entitled to the protection she has sought from the Tribunal.

9. Consequently, I do find that the tenant's application dated 8.2.2023 is merited and the same is allowed in terms of prayers (c), (d) and (e) thereof.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DECEMBER 2023.**

**HON. CYPRIAN N. MUGAMBI - CHAIRPERSON**

12.2023

Delivered in the presence of;

Mr. Angulu holding brief for Mr. Amendi for the Landlord

Ms. Sharon Olenja – the Tenant in person

