



**Ouma v Onyango t/a Motions Hotel (Tribunal Case E075 of 2023)
[2024] KEBPRT 474 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 474 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E075 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
APRIL 12, 2024**

BETWEEN

GEORGE OTIENO OUMA LANDLORD

AND

EDWARD ONYANGO T/A MOTIONS HOTEL RESPONDENT

RULING

A. Dispute Background

1. The landlord/applicant moved this tribunal vide a reference under Section 12 (4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 dated 18th December, 2023 with a Complaint that the tenant has refused to give vacant possession of the suit premises despite being served with a notice to terminate tenancy dated 4th September, 2023 which was expressed to take effect on 1st December, 2023. The landlord also complained that the tenant was in rent arrears of KES. 2,090,000 which caused the landlord to issue the said notice.
2. The landlord/applicant filed a Notice of Motion under a certificate of urgency dated 18th December, 2023 in which he sought the following orders; -
 - i. That the application be certified urgent.
 - ii. That the court issues an order reinstating possession of the premises currently known as Motions Hotel and sitting on Land Parcel No. KISUMU/MANATTA 'A'/3948 situated along Kondele-Kibos road within Kisumu City, back to the landlord and permit the landlord to break into and gain access to the premises.
 - iii. That the court issues an order evicting the tenant/respondent from the suit premises.
 - iv. That the court issues a certificate permitting the landlord to levy distress for rent against the tenant/respondent for rent arrears amounting to KES. 2,090,000.



- v. That the O.C.S Kisumu Central Police Station and/or Kondele Police Station and/or Migosi Police Station be directed to provide enough security and use reasonable force, where necessary during enforcement of the orders above.
 - vi. That costs of the application, the distress for rent and that of the eviction be borne by the respondent/tenant.
3. The application is supported by an affidavit of even date in which the landlord deposes as follows; -
- i. That the landlord is the registered proprietor of the land and suit premises. A copy of the title deed is annexed as “GOO-1”
 - ii. That the parties have a tenancy agreement that dates back to the year 2015. Copies of the tenancy agreements for 2015 and 2017 are annexed as “GOO-2”.
 - iii. That the tenant made most of his rent payments via Mpesa. Copies of Mpesa statements are annexed as “GOO-3”.
 - iv. That the tenant defaulted in rent payment for over 2 months and the rent arrears stood at KES. 2,090,000 as at 18th December, 2023 and the landlord was forced to issue a Termination Notice which was duly served on 5th September, 2023. A copy of the Notice is annexed as “GOO-4” and a copy of the affidavit of service is annexed as “GOO-5”.
 - v. That despite the said notice having lapsed, the tenant has refused to give vacant possession of the suit premises.
 - vi. That to date, the tenant has not filed any reference nor challenged the said notice and the tenant has arrogantly informed the landlord that he will never leave the premises and that there is nothing that the landlord can do.
 - vii. That the premises are guarded by a contingent of about 10 goons hired by the tenant making it impossible for the landlord to take possession without the help of the National Police Service.
 - viii. Copies of the rent account statements are annexed as “GOO-7”.
 - ix. That the huge rent arrears are causing the landlord insurmountable losses and damages.
 - x. That the landlord is old and frail and has no strength to engage in a prolonged tussle with the tenant.
4. The tenant filed a Notice of preliminary objection dated 3rd January, 2024, seeking that the said application be struck out on grounds that the tribunal lacks jurisdiction to adjudicate over the dispute and that the suit in entirety is frivolous and a blatant abuse of the court process.
5. At a court hearing on 5th January, 2024, the Notice of Preliminary objection was dismissed for being misconceived and the tenant was directed to file a replying affidavit. The court also directed that the matter be disposed of by way of written submissions.
6. The tenant filed grounds of opposition dated 23rd January, 2024 seeking that the application herein be struck out on grounds that the tenant’s suit is sub-judice to Kisumu Civil Case No. E343 Of 2023 (edward Onyango Versus George Otieno Ouma).
7. The landlord filed an undated further affidavit in which he has deposed to issues already raised in his supporting affidavit and that the tribunal had already made a determination to the effect that the tribunal has jurisdiction to determine this matter.



8. Both parties filed their written submissions with the Landlord filing his dated 15th February, 2024 and the tenant filing his dated 13th March, 2024. We shall consider both submissions while dealing with the issues for determination.
9. The tenant/respondent filed a replying affidavit dated 11th March, 2024 which was filed out of time after the landlord/applicant had already filed their written submissions and thus this tribunal shall not consider the said replying affidavit.
10. On 4th April, 2023, when the tribunal was scheduled to deliver the ruling, both parties were present and admitted that the case at the Chief Magistrate's court had been dismissed for want of jurisdiction. The ruling was then adjourned to 12th April, 2024.

B. Issues for determination

11. The following are the issues for determination; -
 - a. Whether the landlord/applicant is entitled to the orders sought in the application dated 18th December, 2023.
 - b. Who shall bear the costs of the application?

Issue (a) Whether the landlord/applicant is entitled to the orders sought in the application dated 18th December, 2023.
12. The landlord/applicant approached this tribunal seeking for orders of vacant possession and distress for rent following rent arrears of KES. 2,090,000 and a notice of termination of tenancy dated 4th September, 2023 which was expressed to take effect on 1st December, 2023.
13. In the case of *Manaver N Alibhai t/a Diani Boutique – vs- South Coast Fitness & Sports Centre Limited* Civil Appeal No. 203 of 1994 it was held as follows: -

“The Act lays down clearly in detail, the procedure for the termination of a controlled tenancy. Section 4(1) of the Act states in very clear language that a controlled tenancy shall not terminate or be terminated and no term or condition in or right or service enjoyed by the tenant of any such tenancy shall be altered otherwise than in accordance with specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the tenant. The notice must also specify the ground upon which termination is sought. The prescribed notice in form A also requires the landlord to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice.”
14. A termination of tenancy notice ought to comply with the dictates of Section 4(2) of Cap 301.
15. Upon examining the termination notice served herein, we find that the notice dated 4th September, 2023 is in the prescribed form and was properly issued.
16. Section 6(1) of Cap 301 provides as follows-

“6 (1) A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the



matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal”.

17. Upon perusal of the filed documents, we find that the tenant/respondent herein has not filed any reference in the tribunal to oppose the said notice to terminate tenancy. The landlord further confirms the same in his supporting affidavit dated 18th December, 2023
18. The tenant on the other hand in his written submissions dated 13th March, 2024 avers that when he took over the said premises, it was not habitable and that the tenant was mandated under the tenancy agreement to renovate and build the unfinished parts, improve and partition the suit premises which was done by him incurring expenses to the tune of KES. 6,000,000 which expenditure was to be recovered by him from future rent but the same was yet to be recovered.
19. A cursory look at the said expired tenancy agreement dated 26th January, 2015 at paragraph 6(c), it provides as follows; -

“Upon receiving a written consent from the landlord, the tenant is permitted to undertake any renovations and improvement the tenant requires including partitioning the premises. Any such improvement made by the tenant shall remain the landlord’s property however the tenant shall be allowed to recover such expenditures spent on the improvement from future rent. However, all minor alterations and repairs shall be at the tenant’s costs.” (Emphasis ours)
20. The issue of compensation by the tenant did not come up after expiry of three (3) years of the tenancy agreement and the tenant continued to pay rent thereafter without claiming the amount sought to be recovered against the landlord. The said tenancy agreement expired on 26th January 2018. The tenant cannot therefore bring it up at this time after the landlord issued a notice to terminate his tenancy due to rent arrears.
21. Furthermore, the tenant has not filed any written consent showing that the landlord allowed him to do the said renovations and improvements to warrant the said recovery of rent as stated in the tenancy agreement quoted above, neither has the tenant filed any assessment for the said renovations prepared by an expert to prove the said amount of KES. 6,000,000.
22. Following the above analysis, we find that the Notice to terminate tenancy dated 4th September, 2023 is valid and took effect on 1st December, 2023 as expressed therein in absence of a reference under Section 6(1) as read with Section 10 of Cap. 301, Laws of Kenya.
23. We therefore find and hold that the landlord is entitled to the orders sought in the application herein.

Issue (b) Who shall bear the costs of the application?

24. Under Section 12(1)(k) of Cap. 301, Laws of Kenya, costs of any suit before this tribunal are in its discretion but always follow the event unless for good reasons otherwise ordered. We shall order costs to the landlord/applicant being the successful party.

C. Orders

25. In conclusion, the following final orders commend to us-
 - a. The application dated **18th December, 2023** is hereby allowed with costs.
 - b. The reference dated 18th December, 2023 is settled in terms.



- c. The tenant shall forthwith vacate the suit promises within 30 days hereof and in default shall be forcibly evicted therefrom by a Licensed Auctioneer who shall be provided with security by O.C.S Kisumu Central Police Station and/or Kondele Police Station and/or Migosi Police Station.
- d. The tenant shall pay costs of **Kshs. 30,000/-** to the landlord/applicant.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12th DAY of APRIL 2024.

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE

(PANEL MEMBER)

In the presence of:

Mukabani for the Landlord

Maua for the Tenant

