



**Chege v Villa Greens Limited (Tribunal Case E300 of 2023)
[2023] KEBPRT 639 (KLR) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 639 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E300 OF 2023
A MUMA, AG. CHAIR
OCTOBER 13, 2023**

BETWEEN

STEPHEN CHEGE APPLICANT

AND

VILLA GREENS LIMITED RESPONDENT

RULING

A. Parties and Representatives

1. The Applicant Stephen Chege is the tenant and had rented space for business in the suit property shop No. 6 Bulpark Square located along Ngong Road within Nairobi County (hereinafter the “Tenant”).
2. The firm of Ajulu & Associates Advocates represents the Tenant in this matter.
3. The Respondent Villa Greens Limited is the Property Managing Agent who have authorized Annastasia Wanjiru, the Landlady and the owner of the suit property and had rented out the space on the suit premises to the tenant to act on their behalf.
4. The firm of Barongo Ombasa Advocates LLP represents the Landlady in this matter.

B. Background of the Dispute

5. The Applicant/Tenant entered into a Lease Agreement with the Landlord on 8th December 2015 and the same was renewed on 1st January 2016. The Tenant has been operating a business by the name SunUp Electricals Limited.
6. The Tenant alleged that the Landlord herein communicated his intention to increase the rent amount from Kshs 17,325 to Kshs 18,191 without any basis. The Tenant avers that the notice seeking to increase the rent amount is discriminative as he was the only Tenant who was issued with the notice seeking



to increase the rent amount and hence points to a constructive effort to forcefully evict him from the premises.

7. Consequently, the Tenant filed a Reference and an Application dated 17th March 2023 seeking the intervention of this Honorable Tribunal.

C. The Tenant's Claim

8. The Tenant avers that he had rented out the Respondent's space, No. 6 Bulpark Square located along Ngong Road within Nairobi County.
9. The Tenant avers that he operates a business in electronic goods and that he fulfils his obligations as a Tenant by paying the monthly rent as and at when the same falls due.
10. The Tenant avers the Landlord/ Respondent issued him with a notice seeking to increase the rent from Kshs 17,325 to Kshs 18,191 without any basis which he objected vide a letter dated 10th March 2023.
11. The tenant further avers that upon receiving the Tenant's opposition to rent increment, the Respondent issued a letter dated 9th March 2023 terminating tenancy and requiring him vacate and surrender the premises by 9th April 2023.
12. Additionally, the Tenant states that the Respondent seeks to execute termination and rent increment at the same time which is illegal.

D. The Landlord's Claim

13. It is the Landlord's case that the Lease Agreement between him and the Tenant provided for 5% increment and therefore Kshs. 17,325/= as monthly rent was fair and reasonable since it was negotiated and agreed upon by the Tenant.
14. The Landlord avers that at the time of filing the application on 17th March 2023, the Applicant and the Landlord had discussed the issue of rent increment and concerns on late payment of rent and therefore Tenant's allegation that the decision to increase rent was unilaterally made is false.
16. The Landlord also contends that the Tenant has been late in remitting the monthly rent stating that in the months of May 2022, June 2022 and July 2022 the rent due remained unpaid and the same was settled after a demand for settlement was made.
17. The Landlord submits that the late rent payment despite demanding of the same that he concluded that the Tenant had no intention to honour the Lease Agreement it was upon the same that he issued notice seeking to terminate tenancy.

E. Jurisdiction

18. The jurisdiction of this Tribunal is not in dispute.

F. List of Issues for Determination

19. The issues raised for determination are as follows;
 - a) Whether the Notice to Terminate tenancy issued by the Landlord and the reasons advanced are legal and should be upheld?
 - b) Whether the Landlord ought to be restrained from evicting the Tenant?



G. Analysis & Determination

20. The Reference filed by the Tenant/Applicant raises fundamental issues discussed herein below:

a. Whether the Notice to Terminate tenancy, issued by the Landlord and the reasons advanced are legal and should be upheld?

21. Section 4(2), of the Land and Tenant (Shops, Hotels and Catering Establishments) Act Chapter 301 Laws of Kenya states that:

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, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form. No tenancy shall take effect until such date, not being less than two months after the receipt thereof by the receiving party.

Section 4(4) of the Act provides that a notice shall take effect not being less than two months after the receipt thereof by the receiving party.

22. In *Munaver N Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited* [1995] eKLR, the Court of Appeal held that the notice of termination of the tenancy was void for failing to comply with Section 4 of the Act stating as follows;

“The Act lays down clearly and 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 grounds on which termination is sought. The prescribed notice in Form A also requires the landlady to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice.”

23. From the foregoing, it is clear that a notice to terminate or alter the term of a controlled tenancy must be issued not less than two months to the tenant and the same must indicate valid reasons for such termination.

24. The evidence tendered before this Honourable tribunal by the Tenant indicates that the Landlord issued the termination of tenancy agreement on 9th March 2023 and the same was to take effect on 9th April 2023. This is one month after the said notice had been issued which is in blatant violation of Section 4 (4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*. I have examined the said notice and hold that the same is not valid.

25. On the grounds issued by the Landlord, Section 7 of the *Land and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya provides for the grounds on which a landlord may seek to terminate tenancy. Section 7(c) permits a landlord to issue a notice where the tenant has committed other substantial breaches of his obligations under the tenancy or for any other reason connected with the tenant's use or management of the premises comprised in the tenancy. This means that the Landlord is empowered by law to issue a notice where the Tenant defaults on rent, makes late payment or fails to observe obligations and terms as per the Lease Agreement between themselves.



26. The Tenant has not denied remitting late rent payments to the Landlord. The Landlord has adduced evidence before this tribunal to prove the same.

b. Whether the Landlord ought to be restrained from evicting the Tenant?

27. The question before this Honourable Tribunal is whether the Applicant has fully established a case for grant of injunction.
28. The Tenant avers that the Landlord made an attempt to increase the rent from Kshs 17,325 to Kshs 18,191 and it was until when the Tenant objected the same that he was issue with a Notice terminating tenancy. The Landlord on the other hand avers that the Tenant has been defaulting and or making late rent payments which led to her issuing the notice terminate tenancy. This is a clear indication that the Tenant seeks to reap this Tribunal's protection from his wrong doings.
29. He who comes to equity must come with clean hands. The application for injunction being an application seeking equitable relief must fail the moment the Court finds the applicant's hands are tainted. This is what was stated in the case; *Caliph Properties Limited v Barbel Sharma & another* [2015] eKLR, where the Court stated:

“Secondly, the injunction sought is an equitable remedy. He that comes to equity must come with clean hands and must also do equity. The conduct of the Plaintiff in this case betrays him. It does not endear him to equitable remedies. ... He who comes to equity must fulfill all or substantially all his outstanding obligations before insisting on his rights. The Plaintiff has not done that. Consequently, he has not done equity.”

30. The Tenant's Application therefore fails on these grounds.

H. Orders

- a. The upshot is that the Tenant's Reference dated 13th December, 2022 is partially merited.
- b. The Landlord is at liberty to issue a fresh valid notice to terminate tenancy that is; one that shall take effect after a period not being less than two months after the receipt by the receiving party.
- c. Arrears of July, August, September and October be settled on or before 30th of October 2023 day's failure to which the landlord shall be at liberty to levy distress and to evict without any further reference to this tribunal.
- d. If paid in 15 days, Tenant to continue paying on or before the 10th of every subsequent months as agreed that is to say the increment takes effect from 1st November 2023 (Kshs 18,191)
- e. Each party to bear its own costs.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 13TH DAY OF OCTOBER 2023. NO APPEARANCE FOR THE TENANT AND THE LANDLORD.

HON A. MUMA

AG CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

