



**Njoroge & another v Muriuki (Tribunal Case E018 of 2024)  
[2024] KEBPRT 878 (KLR) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 878 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E018 OF 2024  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
JUNE 28, 2024**

**BETWEEN**

**MICHAEL MWANGI NJOROGE ..... LANDLORD**

**AND**

**ELEGANT INVESTMENTS (1996) LTD ..... AGENT**

**AND**

**HOSEA GICHURU MURIUKI ..... TENANT**

**JUDGMENT**

1. The Landlord/Applicant originated these proceedings by the reference dated 13/1/2024. The same was said to be founded on Section 12(4) of the [landlord and Tenant \(Shops, Hotels and Catering establishments\) Act](#) (Cap 301) hereinafter “the Act”. The landlords grievances were that:-
  - i. The landlord served the Tenant with a notice dated 30/6/2023 terminating his tenancy as from 1/9/2023.
  - ii. The tenant’s lease with the landlord expired, in that regard the Landlord does not wish to renew the lease.
  - iii. That the Tenant has been irregular in paying his monthly, as such, (sic) the landlord now requires vacant possession.
  - iv. The Tenant Hosea Gichuru Muriuki has stopped, (sic) the tenants from paying rent to my appointed Agents m/S Elegant investments (1996) Ltd.
  - v. Tenant has not paid rent arrears of Kshs.50,000/-.
2. That at one point and by an order made on the 20/2/2024 the landlords reference was dismissed for want of prosecution. However, the landlord filed the application dated 5/3/2024 for the reinstatement



of his reference dated 13/1/2024. The reference was not opposed and this court reinstated the said reference by an order made on the 5<sup>th</sup> April 2024. This court as a sequence to that order directed that the suit be heard on the 14<sup>th</sup> May 2024.

3. Before then, the Tenant had filed Mombasa BPRT case No. E020/2024 which was founded on the reference dated 12/1/2024. On the face of it, the said reference was filed out of time and without leave of the court. Section 6(1) of the Act provides that:-

“A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under Section 4(s) 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.

Provided that a Tribunal may, for sufficient reason and on such conditions as it may think fit permit such a reference notwithstanding that the receiving party has not complied with any of the requirements of his Section”.

4. From the above, it is clear that at the time of writing this judgement, the status of the Tenant’s reference dated 12/1/2024 had not been regularized pursuant to Section 6(1) of the Act and thus the same was a nullity in law ab initio. In essence, over and above the order to consolidate this file and file no. E020/2024 we are of the view that all the matters founded under the later file be dismissed.
5. Turning back to the landlord’s reference, we are of the view that the same is fatally defective. The reference was purported to have been founded on Section 12(4) of the Act. The particular provision deals with minor complaints and termination of tenancy cannot be considered under such parameters.
6. As that may be, the landlord, if at all, should have filed a reference under Sections 6 and 10 of the Act to implement his notice of termination dated 30/6/2023. The same was to take effect on the 1/9/2023 whereas the lease agreement is said to terminate on the 4/1/2024. The said lease is dated 4/1/2020.
7. Going back to section 10 of the Act the same provides that:-

“Effect of notice where the Tenant fails to refer to Tribunal etc:-

Where a landlord has served a notice in accordance with the requirements of section 4 of this Act, on a tenant and the tenant fails within the appropriate time to notify the landlord of his unwillingness to comply with such notice, or to refer the matter to a Tribunal then subject to section 6 of this Act, such notice shall have effect from the date therein specified to terminate the tenancy, or terminate or alter the terms and conditions, thereof or the rights or services enjoyed thereunder”.

8. From the plain reading of the Act, the tenancy herein terminated effective the 1/9/2023. The grounds for the termination of the tenancy were that:-

“Tenant has consistently been irregular in paying his monthly rent as such, he has accumulated rent arrear’s to the tune of Kshs.289,000/-. The landlord now requires vacant possession”.



9. This disposition by the landlord was never contradicted by the Tenant. Therefore, the landlord had a valid and legitimate ground to institute the termination process. Section 7 (1) (b) provides as a ground for termination of tenancy as follows:-

“That the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable”.

10. The rents in arrears in this matter exceed the rents for above 5 months. Actually only Kshs.11,000/- short of rents in arrears for a period of 6 months. The only hitch is on the way the landlord originated these proceedings. However for the larger interest of justice we would invoke the provisions of Article 159 (2) (d) which provides that,

“Administration of justice is to be done without undue regard to procedural technicalities”.

11. We are more so persuaded to invoke this particular clause in view of the landlord’s and 2<sup>nd</sup> Respondent’s testimony in court. They testified that they were willing to allow the Tenant continue with quiet possession until on or before the 31/12/2024. To them, these would be more than sufficient time for the Tenant to manage smooth evacuation from the demised premises.
12. We would therefore determine that the Tenancy herein effectively terminated on the 1/9/2023 but this court with the concurrence of the landlord will allow quiet possession of the demised premises by the Tenant until the 31/12/2024 when he will unconditionally handover vacant possession of the same. In the event of default, the landlord shall be at liberty to effect eviction with the assistance of the local OCS at the cost of the Tenant.
13. Having appreciated the camaraderie demonstrated by the parties in this proceedings, we would direct that each party do bear own costs of this suit.
14. In the final analysis, the orders that commend to us are the following:-
- (i) That the notice of termination took effect on the 1/9/2023. The Tenant is however allowed quiet possession and is to deliver vacant possession by the 31/12/2024 and in case of default the landlord to effect eviction with the assistance of the local OCS at the Tenants costs.

SUBPARA (ii)

That each party do bear own costs of this suit.0

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF JUNE, 2024.

**HON. NDEGWA WAHOME MBS HON. JOYCE MURIGI**

**PANEL CHAIRPERSON MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Ruling delivered in the presence of Applicants and in the absence of the Tenant after the application by the Tenant dated 4<sup>th</sup> June 2024 of this judgement has been dismissed.

**HON. NDEGWA WAHOME MBS HON. JOYCE MURIGI**

**PANEL CHAIRPERSON MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**



8<sup>th</sup> July 2024

3

