



**Miano v Githinji & 2 others (Tribunal Case E1055 of 2022)
[2023] KEBPRT 1330 (KLR) (13 June 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1330 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1055 OF 2022
CN MUGAMBI, CHAIR
JUNE 13, 2023**

BETWEEN

NANCY MIANO TENANT

AND

MICHAEL WARUI GITHINJI 1ST RESPONDENT

AVIATORS LOUNGE & GRILL 2ND RESPONDENT

KENYA AIRPORTS AUTHORITY 3RD RESPONDENT

RULING

Introduction

1. The tenant's application dated 10.11.2022 seeks orders of injunction restraining the landlord and the other Respondents from in any manner interfering with the tenant's quiet possession of the "suit restaurants", located at Lang'ata, Wilson Airport, and further orders that the Respondents be restrained from illegally evicting the Tenant, that the eviction notice dated 10.11.2022 be dismissed and that the 1st Respondent be ordered not to alter the terms of the lease agreement dated 30.5.2022 without reasonable grounds.

The Tenant's Depositions

2. The tenant has filed an affidavit in support of her application sworn on 10.11.2022 wherein she has deposed that on 30.5.2022, she entered into a lease agreement with the 1st Respondent over the suit premises for a period of three (3) years.
3. The Tenant/Applicant has further deposed in her affidavit that she has never had any problem with the payment of rent.



4. The Tenant also depones that on 10.11.2022, she received a notice to vacate the premises via a text sent through whatsapp. The notice stated that the tenancy was being terminated on the basis that the tenant had an unpaid water bill of Kshs. 10,000/= which the tenant disputes.
5. It is the tenant's further deposition that, the 1st Respondent has allowed strangers to stay in the suit premises without the consent of the Tenant/Applicant.

The 1st Respondent's Depositions

6. The 1st Respondent has sworn an affidavit in reply which he has deponed that the Applicant is indeed his tenant in the suit premises paying a monthly rent of Kshs. 20,000/=.
7. The 1st Respondent depones in his affidavit that on 22.9.2022, he issued the tenant with a notice to terminate tenancy as provided for under the provisions of cap 301 and the same was duly served upon her.
8. The 1st Respondent further states that he has not threatened the tenant in any way but only sent a text reminder to the tenant to vacate the suit premises as per the notice dated 22.9.2022.
9. It is the 1st Respondent's view that the tenant ought to have filed a reference in objection to the notice instead of a complaint as she has done in this matter.

The 2nd Respondent's reply

10. The 2nd Respondent did not file any replies to the tenant's application.

The 3rd Respondent's Deposition

11. The 3rd Respondent's replying affidavit has been sworn by one Mr. Muchiri Wachira, an officer of the 3rd Respondent who has deponed that there is no subsisting lease or license agreement between the 3rd Respondent and the 1st and 2nd Respondents.
12. Mr. Muchiri has further deponed that the 3rd Respondent did not issue any consent to the head lessor for the sub lease between the tenant and the 1st Respondent and hence it is a stranger to the suit as the parties are unknown to it.
13. Mr. Muchiri has also deponed that the 3rd Respondent is neither privy nor party to any agreement between the Applicant, the 1st and 2nd Respondents herein.
14. It has also been deponed that the 3rd Respondent has not received any notice of change of the names of any of its licenses to that of the 2nd Respondent, thus the entity remains a stranger to the 3rd Respondent.
15. It is the 3rd Respondent's view that it has been improperly joined to this suit and ought to be struck out.

Analysis and Determination

16. On 9.3.2023, Mr. Otieno for the tenant applied to amend his client's application dated 1.2.2023 to have the third party therein indicated as Quatara Auto Ltd on the basis that it was the proper party indicated by the 3rd Respondent. The application was allowed and the application ordered served upon the third party for hearing on 3.5.2023.
17. The application set down for hearing on 3.5.2023 is the one dated 10.11.2022. When the same came up for hearing on 3.5.2023, counsel for the Tenant did not raise the issue of the third party's application. I have perused the pleadings in this matter and the tenant's claim against the third party is not clear



nor has it been established. The Tenant having not made clear her claims against the third party, and there being no evidence on the record that the third party is in a landlord/tenant relationship with the tenant, I find no basis for making any orders against the said third party.

18. The 3rd Respondent has also argued that its joinder in these proceedings is improper. I have yet again perused the pleadings herein and again I do not find any basis upon which the 3rd Respondent was sued. From the record, it does appear that the 3rd Respondent is not in any known relationship with the tenant, the 1st and 2nd Respondents. I am in agreement with the 3rd Respondent that the tenant has no claim against it and the complaint against it is misplaced. The tenant has not stated what breaches the 3rd Respondent has committed against her.
19. From the lease agreement annexed to the tenant's affidavit, it is clear that the tenancy between the parties herein is a controlled tenancy. That being the case, termination of the same has to be in compliance with the provisions of section 4(2) of [cap 302](#).
20. The notice to terminate tenancy that the tenant complains of is the notice by text via whatsapp text to the tenant by the landlord on 10.11.2022 and marked as the tenant's exhibit No..02. I have seen the notice referred to, it gives the tenant one month to vacate the suit premises. Clearly, it is not a notice under section 4(2) of [cap 301](#) and it is of no effect. The landlord's explanation of this notice is that "he sent a text message as a reminder to vacate as per the notice dated 22.9.2022".
21. On his part, the 1st Respondent has stated that he served a statutory notice to the tenant to terminate her tenancy. The 1st Respondent has annexed the notice to terminate to his replying affidavit. I have perused the said notice and I do find it to be a proper, legal and valid notice under the provisions of section 4 of [cap 301](#). The tenant has not denied being served with the said notice and as such, I do agree with the 1st Respondent that the tenant ought to have filed a reference to the Tribunal under section 6 of [cap 301](#) if she was minded of opposing the notice to terminate.

In the absence of a reference filed under section 6 aforesaid, the notice to terminate tenancy became effective on the date indicated therein, that is, 1st December 2022.
22. It would also appear that the tenant has already vacated the suit premises at paragraph 12 of her supporting affidavit, the tenant deposed as follows:-

"that additionally, the 1st Respondent has allowed strangers to stay in the premises without my consent."

In my view, this is a pointer that before the tenant came to court on 10.11.2022, she was already out of the premises. A further indication of the situation obtaining can be gleaned from the proceedings of 16.12.2022 when counsel for the tenant informed the court that the premises had been closed down and sold to a third party. In response to this statement, the 1st Respondent stated:-

"All properties in the premises belonged to me. I issued a notice to the tenant to move out in September..... I only took what belonged to me."

I am of the view that the notice that the 1st Respondent was referring to was the notice to terminate tenancy dated 22.9.2022.

23. The tenant having failed to file a reference as required under section 6(1) of [cap 301](#), the tenancy between the parties herein terminated on 1.12.2022, beyond that date, the tenant became a trespasser upon the suit premises.



24. In the circumstances, I do not find any merits in the tenant's application dated 10.11.2022 and the same is hereby dismissed with costs to the landlord.

RULING DATED, SIGNED AND DELIVERED THIS 13TH DAY OF JUNE 2023.

HON. CYPRIAN MUGAMBI

CHAIRMAN

13.6.2023

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