



**Kihoria v Charles (Tribunal Case E590 of 2021)  
[2023] KEBPRT 1243 (KLR) (19 January 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 1243 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E590 OF 2021  
GAKUHI CHEGE, VICE CHAIR  
JANUARY 19, 2023**

**BETWEEN**

**DOMINIC NGIGI KIHORIA ..... APPLICANT**

**AND**

**MURITHI CHARLES ..... RESPONDENT**

**JUDGMENT**

1. By a tenancy notice dated 11<sup>th</sup> August 2021, the landlord is seeking termination of the tenant's tenancy over plot No. 105/7814, 391B, Ruai connection with effect from 1<sup>st</sup> November 2021.
2. The grounds cited in the tenancy notice are non-payment of Kshs. 39,000/= monthly rent which had accumulated arrears of Kshs. 126,000/=. The tenant is also accused of being a nuisance and tampering with the electricity meter.
3. Being opposed to the tenancy notice, the tenant filed the instant reference on 14<sup>th</sup> October 2021 under Section 6(1) of Cap 301 Laws of Kenya.
4. On 5<sup>th</sup> January 2022, the parties agreed by consent to file and exchange list of documents and witnesses statements for use at the hearing of the reference within 30 days thereof. The matter was therefore fixed for mention on 4<sup>th</sup> February 2022 to confirm compliance and fix a hearing date.
5. By 4<sup>th</sup> February 2022, when the matter came up for mention both parties had not complied with Order 11 of the Civil Procedure Rules and the matter was therefore pushed for further mention on 3<sup>rd</sup> March 2022. However, on the said date, there was no compliance and the matter was again given a fresh mention date for 29<sup>th</sup> March 2022.
6. On 29<sup>th</sup> March 2022, the tenant had complied by filing a list of documents dated 22<sup>nd</sup> February 2022 and list of witnesses and his statement dated 25<sup>th</sup> February 2022. Although the landlord's counsel



indicated that he would comply on the same day, there was no compliance by the time the matter came up for hearing on 20<sup>th</sup> June 2022.

7. On 20<sup>th</sup> June 2022, the matter was adjourned on account of an application made on behalf of the landlord's counsel who had a dental clinic appointment to attend to. The matter was therefore fixed for hearing on 18<sup>th</sup> August 2022. However, on the said date, the tenant was taking his child back to school and his counsel sought for another hearing date. The matter was thus adjourned to 26.9.2022.
8. On 26.9.2022, the matter could not proceed as the hearing notice served upon counsel for the landlord indicated that the matter was to be heard on 26<sup>th</sup> October 2022. It was therefore adjourned to 11<sup>th</sup> October 2022.
9. On 11<sup>th</sup> October 2022, the matter was adjourned at the behest of counsel for the landlord who was appearing before Wote High Court in HCCC No. 56 of 2013. The matter was therefore fixed for hearing on 26<sup>th</sup> October 2022.
10. On 26<sup>th</sup> October 2022, the matter proceeded to hearing from the point it had reached on 24<sup>th</sup> May 2022 when the tenant initially testified and adopted his witness statement and produced documents listed in his filed list dated 22<sup>nd</sup> February 2022. He had also been partially cross examined by counsel for the landlord.
11. According to the tenant's witness statement, he rented the suit premises to conduct a bar and butchery business. The tenant bought the said business from one Deborah Nyanchama t/a Viden Enterprises at a cost of Kshs. 500,000/=. He renovated the premises at a cost of Kshs. 400,000/= and developed the butchery structures at a cost of Kshs. 1,076,000/=. The agreed rent is Kshs. 39,000/= per month.
12. The tenant was served with notice to terminate tenancy by the landlord on grounds of alleged non-payment of rent amounting to Kshs. 126,000/= which he disputes.
13. The tenant stated that in the years 2020 and 2021, his business was adversely affected by the hard economic times occasioned by COVID-19 pandemic like many other citizens in the hospitality industry leading to late payment of rent in June 2021 which was paid up over the July-October 2021 period.
14. According to the tenant, the landlord has not been maintaining a rent book nor has he been issuing receipts for rent payments. He denies being a nuisance and the allegation of tampering with the electricity meter. He states that he has a token meter and pays for his electricity consumption in advance.
15. It is the tenant's evidence that he has an independent meter for his business premises for which he is answerable to the power company and that any action against him for power misuse lies with Kenya Power Company. He contends that he owes no power supply debt. He however admits that his power supply had an issue for a period of time and sourced power from a neighbor for which he paid via tokens part of which bills are filed with this Tribunal.
16. It is contended by the tenant that the notice to terminate tenancy issued by the landlord is illegal, wrongful and an act of harassment which is calculated to illegally and wrongfully evict him from the rented premises leading to irreparable loss and damage.
17. It is further contended that the landlord has been harassing the tenant with a view to sublet the premises to another tenant.
18. The tenant availed original bank statements to show how he pays his rent to the landlord. In cross-examination, the tenant denied that he pays rent late. He stated that in the month of June 2021, he



- paid rent on 18<sup>th</sup> June 2021 and in July 2021 paid his rent on 14<sup>th</sup> July 2021. By then, his bar business was closed which explains why he was paying past the agreed deadline. He denied being a nuisance. He denied the alleged attempt to fight the landlord.
19. The tenant denied tampering with the premises' electricity meter or that of his neighbor. He stated that he used electricity from the neighbour's electricity meter when his became faulty. He denied stealing electricity.
  20. In re-examination, the tenant stated that there was no written agreement on the date of payment of rent. He stated that he communicates whenever there was delay in payment of rent to the landlord. All payments are made to the landlord's account at Equity electronically and a confirmation message is sent to the landlord. He stated that the allegation of being a nuisance has not been substantiated.
  21. The tenant stated that KPLC has never complained that he had used their meters illegally. The landlord had also not given him any statement of rent account to show that he had rent arrears and none was filed in court. He denied being in rent arrears.
  22. The tenant's counsel filed submissions in support of the reference which I shall consider together with the issues for determination set out hereunder.
  23. The issues for determination in this matter are:-
    - a. Whether the landlord's notice dated 11<sup>th</sup> August 2021 ought to be approved or dismissed.
    - b. Who is liable to pay costs?
  24. From the onset, I note that the landlord being the initiator of the instant proceedings through the notice to terminate tenancy did not give any evidence nor file documents in compliance with Order 11 of the Civil Procedure Rules, 2010 despite being granted several opportunities to do so.
  25. The tenant's counsel has rightly relied on Section 107(1) of the [\*Evidence Act\*](#) Cap 80, Laws of Kenya to submit that the landlord had the burden to prove that the tenant was indebted to him as stated in the notice of termination of tenancy.
  26. The landlord despite the said burden of prove, chose not to file any documents and/or witness statement and thus decided to keep quiet. The tenant's statement and evidence was thus not controverted. He tendered evidence to show that he was not indebted to the landlord and I have no reason to disbelieve him.
  27. No evidence was tendered to show that rent was payable by a particular date and I cannot impose any such date in absence of such evidence. No demand notice for unpaid rent has been exhibited by the landlord.
  28. The allegations of nuisance and tampering with electricity meter have not been substantiated neither has the landlord demonstrated that they can constitute a ground for termination of tenancy more so in absence of any investigation report by KPLC to prove it.
  29. Section 9(1) of Cap 301, Laws of Kenya empowers this Tribunal upon a reference to conduct an inquiry and inter-alia approve the terms of the tenancy notice either in its entirety or subject to such amendment or alteration as it thinks fit having regard to all the circumstances of the case or order that the tenancy notice shall be of no effect and in either case make such further or other order as it thinks appropriate. In absence of any evidence in support of the tenancy notice herein, I find and hold that the same cannot be of any effect and the reference must therefore succeed.



30. As regards costs, the same are in the Tribunal's discretion under Section 12(1)(k) of Cap 301, Laws of Kenya and follow the event unless for good reasons otherwise ordered. I have no reason to deny the tenant costs.
31. In conclusion therefore, the final orders which commend to me in this matter are:-
- a. The landlord's notice to terminate the tenant's tenancy dated 11<sup>th</sup> August 2021 is declared to be of no effect and/or is dismissed forthwith.
  - b. The tenant's reference herein is consequently allowed with costs.
  - c. The tenant's costs of the reference are assessed at Kshs. 50,000/= to be offset against the rent account if not paid within 14 days hereof.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF JANUARY 2023.**

**HON. GAKUHI CHEGE**

**VICE CHAIR**

**19.01.2023**

