



**Nyarango v Mutua (Tribunal Case E651 of 2023)
[2023] KEBPRT 1223 (KLR) (8 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1223 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E651 OF 2023
CN MUGAMBI, CHAIR
DECEMBER 8, 2023**

BETWEEN

DINA BOSIBORI NYARANGO TENANT

AND

NICHOLAS MUTUA LANDLORD

RULING

Introduction

1. The Tenant's application dated 30.6.2023 seeks orders that the Respondent/Landlord be enjoined from increasing rent, evicting the tenant and/or in any other manner whatsoever interfering with the Tenant's peaceful occupation of the business premises located at Umoja Innercore along Moi drive (hereinafter the suit premises) pending the hearing and determination of the application inter partes. Though the orders sought are sought pending the inter partes hearing of the application, I will treat the same as though they were sought pending the hearing and determination of the reference, considering the Applicant is representing herself. The Applicant has also sought an order for the assistance by the OCS Buruburu police station in ensuring compliance with the orders sought.

The Tenant's depositions

2. The tenant has filed an affidavit in support of her application wherein she has deposed that she has been tenant of the Respondent paying the rent of Kshs. 10,000/= per month.
3. The tenant has also deposed that there is a trench outside his business premises which the landlord has failed to cover and the landlord has also refused to allow the tenant to cover the trench at the tenant's cost subject to recovering of the costs from the rent.
4. The tenant deposes that his premises remained closed for more than five months as a result of the trench which has also made it impossible for the tenant to display his goods such as gas cylinders.



5. Finally, the tenant has deponed that, on 27.4.2023, the landlord served him with an illegal notice to increase the monthly rent from Kshs. 10,000/= to Kshs. 19,000/= with effect from 1.7.2023.

The Respondent's depositions

6. The Respondent has deponed in his replying affidavit sworn on 9.8.2023 that rent for the premises has been raised from Kshs. 10,000/=, 13,000/= and 15,000/= which rent is paid by all the other tenants but the tenant has neglected to pay.
7. The Respondent justifies the rent increment on the basis of the rate of inflation, sanitation, garbage collection and the caretaker's salary.
8. The Respondent has also deponed that the trench the tenant complains of was as a result of the new water connection by the Nairobi City Water and Sewerage Company who have in any case completed the works anyway. None of the other tenants have complained.
9. The Respondent further depones that the significant improvement of the premises and the services rendered therein by the landlord cannot be supported by the tenant's rent of Kshs. 10,000/= per month.
10. That due procedure was followed in effecting the notice to increase rent.
11. The Respondent depones that he is not forcefully evicting the tenant and it is actually the tenant who is in rent arrears having not paid rent for the months of April, May, June and July 2023. The tenant has completely failed to pay the arrears and the new rent of Kshs. 19,000/= per month.
12. That it is mischievous for the tenant not to expect any rental increment for over ten years for the suit premises.

Analysis and determination

13. The only issue that arises for determination in this application is whether the tenant is entitled to the prayers sought in her application.
14. I have not seen exhibited in the parties' respective affidavits any written lease agreement and I will therefore treat the relationship between the parties herein as a controlled tenancy.
15. The mainstay of the tenant's complaint and application is the complain that the landlord/Respondent has issued the tenant with an illegal and defective notice to increase rent. This notice is the one dated 27.4.2023 and is in the following terms:-

"Dina Bosibori Nyarango,

Nairobi.

Dear Tenant,

Re: Rent Increase for Shop No. 1

This letter sent on April 27, 2023 makes official notice of our intention to raise the monthly rent from its current rate of Kshs. 10,000/= to Kshs. 19,000/= beginning on July 1, 2023. If you do not accept the increase in rent under the terms of this notice, your current lease will be terminated on July 1, 2023.

Signed



Mutua Nicholas

Landlord

16. Is the above notice illegal and defective?

Notices to terminate or alter terms of controlled tenancies are canvassed under Section 4(2) of Cap 301 which provides as follows:-

“A 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.”

Section 4(5) of Cap 301 further provides as follows:-

A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and requires the receiving party to notify the requesting party in writing, within one month after the date of receipt of the notice whether or not he agrees to comply with the notice.”

17. Clearly the notice by the Respondent dated 27.4.2023 falls short of the statutory requirements set out under Section 4(2) and 4(5) of Cap 301. It is a defective notice and cannot therefore be the basis of increasing rent. If the landlord is desirous of altering the terms of the tenancy by increasing rent, then the law obligates him to issue the mandatory notice under Section 4(2) in its prescribed form.
18. The landlord has deponed in his affidavit that the tenant is in rent arrears having not paid rent for the months of April, May, June and July 2023. The tenant does not dispute owing this rent and I do find that the tenant owes the said rent.
19. The issue of the “trench” that the tenant complains of does not form part of his complaint and in any case, the landlord has explained that the trench was dug by Nairobi City Water and Sewerage Company Limited. I do not think any issue turns on this aspect for determination and I will let it lie.
20. In the circumstances, it is my finding that the tenant’s application has merits and consequently I hereby issue the following orders:-
- (a) That the landlord/Respondent is hereby restrained from increasing rent and/or evicting the tenant from the suit premises.
 - (b) That the tenant is ordered to pay the outstanding rent arrears within a period of thirty (30) days from the date of this ruling failing which the landlord will be at liberty to levy distress for the said rent arrears against the tenant.
 - (c) The complaint by the tenant has been determined by the above orders and the same is allowed in the said terms.
 - (d) Each party will bear their own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF DECEMBER 2023.

HON. CYPRIAN MUGAMBI

CHAIRPERSON



12.2023.

Delivered in the presence of Ms. Njoroge holding brief for Mr. Mutua for the tenant/Applicant

In the absence of the landlord/Respondent

