



**Koinange v Chege & another (Tribunal Case E935 of 2023)  
[2024] KEBPRT 931 (KLR) (19 July 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 931 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E935 OF 2023  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
JULY 19, 2024**

**BETWEEN**

**LUCY NYAMBURA KOINANGE ..... TENANT**

**AND**

**HANNAH CHEGE ..... LANDLORD**

**AND**

**GREEN PLOTS PROPERTIES ..... AGENT**

**JUDGMENT**

1. The tenant moved this Tribunal by way of a notice of motion dated 18<sup>th</sup> September 2023 under certificate of urgency seeking for restraining orders against the landlord from interfering with her tenancy of the suit premises known as Mwega Mwega Bar situate on Plot No. 13207/20, House No. 3, Tigoni Market.
2. The tenant also sought for a declaration that the issues raised in the notice to terminate or alter terms of tenancy dated 29<sup>th</sup> August 2023 were Res Judicata. She also sought to be given one year to vacate the suit premises and costs of the suit.
3. In her supporting affidavit sworn on 18<sup>th</sup> September 2023, the tenant attached the impugned notice of termination of tenancy as annexure LNK1 and the ruling in BPRT CASE NO. E1069 OF 2022 as annexure LNK2. She deposes that the issues in the previous case are similar to those raised herein.
4. The tenant has therefore sought for orders barring her eviction as the allegations made against her had been heard and dismissed by this court. She deposes that the three (3) months' notice given to her was unreasonable.
5. Interim orders were issued at the ex-parte stage with the inter-partes hearing being fixed on 12<sup>th</sup> October 2023.



6. In a replying affidavit sworn on 10<sup>th</sup> November 2023, the 2<sup>nd</sup> Respondent through one George Ndegwa opposed the application denying the allegations made by the tenant therein. He deposes that the tenant was served with notice to terminate tenancy under Section 4(2) of Cap 301 on grounds inter-alia that the landlord intended to occupy and utilize the suit premises for her own business for a period of not less than one year.
7. The tenant is accused of seeking this Tribunal's protection from accounting for various breaches of tenancy listed in the termination notice. The tenant did not notify the landlord whether she would comply or not with the notice and instead rushed to this Tribunal to seek protection.
8. The tenant is accused of committing substantial breaches of her obligations under the tenancy under Section 7(1)(a) & (c) of Cap. 301. She is accused of littering the suit premises without caring about other tenants as depicted in the photos annexed as 'GN2'. The premises are said to be in a dilapidated state.
9. The tenant is accused of seeking to rely on the doctrine of Res Judicata yet she is the one who has filed the instant suit and not the landlord. According to the Respondents, the suit therefore ought to be struck out. The issues in both suits are different and the notice herein unlike in the previous one is valid.
10. Through a ruling delivered on 9<sup>th</sup> February 2024, this Tribunal inter-alia directed its Rent Inspector to visit the suit premises for purposes of determining the status thereof with regard to use, hygiene, damage and management and thereafter file a report in Thirty (30) days thereof.
11. The said inspection took place and a report dated 6<sup>th</sup> June 2024 was prepared and filed herein. The said report concluded that the demised premises were in bad state and not habitable as it not only poses health risk but even safety risk to the occupants. It therefore requires an overhaul renovation and if possible to be pulled down for reconstruction.
12. We are therefore called upon to determine the following issues;
  - a. Whether the tenant is entitled to the reliefs sought in the application dated 18<sup>th</sup> September 2023.
  - b. Whether the landlord's notice to terminate tenancy ought to be upheld or declared a nullity.
  - c. Who is liable to pay costs of the suit?
13. The tenant moved this Tribunal by way of a notice of motion dated 18<sup>th</sup> September 2023 under certificate of urgency seeking for restraining orders against the landlord from interfering with her tenancy of the suit premises known as Mwega Mwega Bar situate on Plot No. 13207/20, House No. 3, Tigoni Market.
14. The tenant also sought for a declaration that the issues raised in the notice to terminate or alter terms of tenancy dated 29<sup>th</sup> August 2023 were Res Judicata. She also sought to be given one year to vacate the suit premises and for costs of the suit.
15. In her supporting affidavit sworn on 18<sup>th</sup> September 2023, the tenant attached the impugned notice of termination of tenancy as annexure "LNK1" and the ruling in BPRT CASE NO. E1069 OF 2022 as annexure "LNK2". She deposes that the issues in the previous case are similar to those raised herein.
16. The tenant has therefore sought for orders barring her eviction as the allegations made against her had been heard and dismissed by this court. She deposes that the three (3) months' notice given to her was unreasonable.



17. Interim orders were issued at the ex-parte stage with the inter-partes hearing being fixed on 12<sup>th</sup> October 2023.
18. In a replying affidavit sworn on 10<sup>th</sup> November 2023, the 2<sup>nd</sup> Respondent through one George Ndegwa opposed the application denying the allegations made by the tenant therein. He deposes that the tenant was served with notice to terminate tenancy under Section 4(2) of Cap 301 on grounds inter-alia that the landlord intended to occupy and utilize the suit premises for her own business for a period of not less than one year.
19. The tenant did not notify the landlord of her intention to object to the notice of termination of tenancy neither did she file a Reference as required under Section 6(1) of Cap 301, Laws of Kenya which stipulates as follows:

“(1) A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) 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 this section.

20. Further Section 10 of the same statute provides as follows;-

“10. Effect of notice where 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.”

21. In absence of any Reference by the tenant against the notice, the tenant cannot seek to challenge the grounds set out therein in line with the decision of the court of appeal in the case of Saheb Vs Hasanally (1981) eKLR at page 4/7 wherein it was held as follows;

“In my opinion it is clear that under the terms of section 10 if a valid notice is not referred, the landlord is entitled to possession without having to prove any of the statutory grounds relied upon in the notice.

To be valid, a tenancy notice must comply with the provisions of section 4, including the requirements of the use of the prescribed form, of setting out the statutory grounds for relief and of due service. The learned judge was wrong in this case to investigate the grounds relied upon in the notice, but even then, he should have given judgment for the appellant on the ground that was conceded, namely that the landlord required the occupation of the premises for the purposes of his business (section 7 (1) (g)). The learned judge was in error



in not awarding possession of the premises to the appellant in accordance with section 10, without making any inquiry into the validity of the grounds relied upon.” (emphasis added)

22. Guided by the foregoing legal provisions and the Superior court’s decision, it is clear beyond any peradventure that the tenant is not entitled to the reliefs sought in the application and the notice to terminate tenancy served by the landlord is valid and incapable of being declared invalid in absence of a Reference under Section 6(1) of Cap. 301.
23. Section 12(4) of Cap 301, provides as follows;
  - “(4) In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit”.
24. It is clear that the relationship between the tenant and her landlord has irretrievably broken down and it would not serve the interest of justice to just dismiss the suit and leave the parties in the same position as the issues between them will continue recurring in the future despite the tenant having been served with notice of termination of tenancy which went unchallenged.
25. The tenant has requested for a period of one (1) year to vacate the suit premises. However, it is noted that the notice of termination of tenancy was to take effect on 10<sup>th</sup> November 2023. A period of 8 months has since lapsed not to mention the fact that the notice was for 3 months as opposed to the 2 months stipulated under Section 4(4) of Cap 301 making altogether 11 months. The tenant is directed to vacate from the suit premises within the next 30 days hereof failing which she will be evicted by a licensed auctioneer who shall be accorded security by the OCS , Tigoni Police Station.
26. As regards the issue of Res Judicata raised by the tenant, the same has no merit as she is the one who filed the suit before this Tribunal and the issues in the previous suit related to an invalid notice to terminate tenancy whereas the notice herein has been found to be valid. There is no basis upon which the doctrine can be invoked in this suit.
27. Award costs of any action before this Tribunal is discretionary under Section 12(1)(k) of Cap 301 but always follow the event unless for good reasons otherwise ordered. We have no reason to deny costs to the Respondents.
28. In conclusion, the following final orders commend to us in this matter;
  - a. The tenant’s application dated 18<sup>th</sup> September 2023 is hereby dismissed with costs.
  - b. The landlord’s notice to terminate tenancy is hereby approved and the tenant shall vacate from the demised premises known as Mwega Mwega Bar, House No. 3 situate on L.R No. 13207/20, Tigoni Market within the next 30 days of the date hereof failing which she will be evicted by a licensed Auctioneer who shall be accorded security by the OCS TIGONI Police Station.
  - c. The tenant shall meet the costs of this suit assessed at Kshs 25,000/=.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED THIS 19<sup>TH</sup> DAY OF JULY 2024**

**HON. GAKUHI CHEGE - PANEL CHAIRPERSON**

**HON. JOYCE A OSODO - PANEL MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

