



**Mutea v Marua (Tribunal Case E053 of 2024) [2024] KEBPRT 1563 (KLR)  
(Commercial and Tax) (13 November 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1563 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
COMMERCIAL AND TAX  
TRIBUNAL CASE E053 OF 2024  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
NOVEMBER 13, 2024**

**BETWEEN**

**NELSON MUTUMA MUTEA ..... TENANT**

**AND**

**SAMUEL MARUA ..... LANDLORD**

**JUDGMENT**

1. This judgement relates to the Tenant's reference dated the 28<sup>th</sup> May 2024. In the reference, the Tenant simply prayed that:-  
  
"I therefore request the Tribunal to investigate the matter and determine the issue".
2. The reference was in response to the Landlord's notice of termination dated 26<sup>th</sup> March 2024. The same was to take effect on the 1<sup>st</sup> day of June, 2024. The reference was filed just a few days short of the effective date.
3. The landlord filed the replying affidavit dated 15<sup>th</sup> July 2024 in response to the Tenant's case. He also annexed duly approved Development Plans on the suit property particularly known as Nyeri Municipality Block 2/965.
4. The landlord also filed a list of documents dated 21<sup>st</sup> August 2024 on which was attached the landlord's bank statement to demonstrate ability to carry out the proposed developments.
5. On his part, the tenant filed the witness statement dated 5<sup>th</sup> September 2024 and the list of documents of the even date. The documents were an assessment of receipts for renovations and developments, assorted photographs of the premises and loan documents from M/S AFC.



6. The Tenant also filed the written submissions dated 5<sup>th</sup> September 2024. On his part, the landlord opted to rely entirely on the Replying Affidavit and the list of documents aforesaid.
7. The case for the Tenant was that:-
  - i. He had been a tenant of the landlord since 2018 and had been meeting his cardinal obligations of paying rent on time.
  - ii. That he had caused massive developments on the premises at the tune of Kshs.217,000/- which was with the consent of the landlord's deceased wife namely Agnes Marua.
  - iii. He prayed to be allowed to remain on the suit premises for the next 2 years so that he could settle his loan obligations with M/S AFC.
  - iv. In the alternative, he sought that the landlord reimburses him the Kshs.217,000/- expended in renovations and development of the premises.
  - v. The Tenant also sought to be paid for lost profits and damages.
8. The evidence of the landlord on the other hand is that:-
  - a. He issued the notice of termination of Tenancy dated 26/3/2024 and the same was to take effect on the 1<sup>st</sup> July 2024.
  - b. He rented the premises with only a shed and which he expected the Tenant to use as a workshop.
  - c. That he never consented to the renovations on the premises.
  - d. The tenant was erratic in his payment of rent and that the same had persisted to date.
  - e. He cannot wait for 2 years to develop the property and needs possession immediately as the Tenant has had the tenancy for 7 years.
  - f. The structures erected by the Tenant can easily be removed and the Tenant should take them same away.
  - g. He was willing to compensate the Tenant for installation of electricity in the event that proof of the same was provided.
9. Having perused the pleadings herein including the submissions and attendant case law, it is our view that the issues for determination herein are the following:-
  - A. Whether the notice of termination of tenancy dated 26/3/2024 is lawful.
  - B. Whether the Tenant should be compensated for the developments and renovations on the suit premises.
  - C. Who should bear the costs of the suit.

**Issue No. A- Whether the notice of termination of Tenancy dated 26<sup>th</sup> March 2024 is lawful.**

10. from the onset, it is plain that the notice of termination dated 26<sup>th</sup> March 2024 is compliant with Sections 4(2), 4(4) and 7 (1) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#). The same is also in complete compliance with Regulations 4(1) of the Regulations to the Act.



11. Indeed the validity and competence of the notice is not under any challenge when looked against the record herein. What we need to evaluate now is the legitimacy of the ground on which the notice is founded.
12. The Landlord has relied on Section 7 (1) (f) of the Act to pursue the termination. The same provides that:-

“That on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises”.
13. In our view, the works as demonstrated in the approved plans marked “SM1” are to cover the entire premises. It is clear that the same is not possible if the temporary structures are allowed to subsist. The landlord has also provided a bank statement in his name to confirm his readiness to effect and/or implement the development plan.
14. from the Development plan, we can see a lot of business sense by the Landlord who is upgrading his chientele from 1 to 44. This means more income for the landlord. When looked against the losses the Tenant would suffer in vacating the premises, the same cannot be compared.
15. We therefore find that the landlord has satisfied the requirements of the law in issuing the termination notice and we would uphold the same on this, we rely on the case of Auto Engineering Ltd – vs- M Gonella & Co. Ltd (1978) eKLR the court held that:-

“For this purpose, the court must be satisfied that the intention to reconstruct is genuine and not colourable, that it is a firm and settled intention, not likely to be changed, that the reconstruction is of a substantial part of the premises, indeed so substantial that it cannot be thought to be a device to get possession, that the work is so extensive that it is intended to do the work at once and not after a time”
16. From the evidence on record, we are convinced that the landlord has satisfied the requirements for regaining possession as provided both by law and by precedence. In the same case of M Gonella Supra, the court further held that:-

“After careful consideration of these plans, which appear to us to be extensive, taken in conjunction with Mr. Gonella’s evidence at the hearing, we think even though the original notice was dated 25/8/1975, applying the test stated by Asquith L.J, that on the evidence it was established that the landlord in this case had a firm and settled intention to carry out the work enshrined in those plans. Do those plans involve substantial work of construction on the premises, applying the test stated, again Lord Evershed MR, in Bewlay (Tobaccoists) vs- British Bata Shoe Co. Ltd (1958) 3 ALL ER 652, 655, namely that the court is entitled to look at the totality of the work and ask if it falls within this part of Section 7(1) (f), we think that the totality of the work proposed in this case clearly satisfies that test”.
17. We would therefore uphold the notice of termination dated 26/3/2024. The landlord will be allowed “to carry out substantial work of construction on such premises or parts thereof”.



**Issue No B- Whether the tenant should be compensated for the developments and/or renovations on the suit premises.**

18. The landlord is agreeable to reimbursement of the costs of installation of electricity at the premises to the Tenant. He however needs proof of such expenditure. He also agrees that water has been installed at the premises. The Tenant seeks for Kshs.50,000/- for installation of power and related expenses. He also seeks Kshs.7,000/- which he reimbursed the previous tenant for installation of water. These are reasonable expenses in our view and shall allow the same to the plaintiff. These are utilities that the landlord will still need at the premises.
19. However, on the other aspects of compensation claimed by the Tenant, we are not persuaded that the same is available to him. There is no evidence rendered to show or confirm that indeed the Tenant had the authority of the deceased's late wife to cause the developments and renovations thereon. Indeed the Tenant has not claimed to have received any such consent from the landlord himself. We are therefore unable to allow compensation to the plaintiff on the balance of Kshs.160,000/- from the Kshs.217,000/- claimed.
20. Section 107 of the Evidence Act provides that:-
- “whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”.
21. We are not persuaded that the Tenant has demonstrated sufficient evidence to warrant the compensation sought. The landlord has termed the developments and renovations effected on the premises to be temporary in nature and easily movable. To him, the Tenant can cart away the same as he delivers vacant possession of the premises. We tend to grant with the Landlord on this.

**Issue No. C- Who should bear the costs of the suit.**

22. In our considered view, though the Landlord did not consent to the developments on the suit premises in writing, he must have been aware of the same. The Tenant from the photos availed to court and from evidence must have undergone some expense though outside the embrace of the law. We would therefore order that each party bears own costs of the suit.
23. In the final analysis, the orders that commend to us are the following:-
- (i) That the notice of termination of tenancy dated 26<sup>th</sup> March 2024 is upheld.
  - (ii) That the Tenant is allowed until the 31/12/2024 to give vacant possession of the demised premises and in case of default to be evicted with the assistance of the area OCS at his cost.
  - (iii) That the Landlord shall reimburse the Tenant the costs of Kshs.57,000/- for installation of electricity and water before he vacates the demised premises.
  - (iv) That each party shall bear own costs of this suit.

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI - PANEL CHAIRPERSON MEMBER  
BUSINESS PREMISES RENT TRIBUNAL BPRT**

Ruling delivered in the presence of Mr. Njogo holding brief for Mr. Mbau for the Tenant, Tenant also present in person, Mr. Muhoho for the Landlord and Landlord absent.



**29<sup>th</sup> July 2024**

