



**Gikonyo v Wairimu & another (Tribunal Case E047 of 2021)  
[2023] KEBPRT 1298 (KLR) (5 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1298 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E047 OF 2021  
CN MUGAMBI, CHAIR  
MAY 5, 2023**

**BETWEEN**

**ROBERT KANYEKI GIKONYO ..... APPLICANT**

**AND**

**GLADYS WAIRIMU ..... 1<sup>ST</sup> RESPONDENT**

**PURITY WANJIRU NJIIRI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. There are three applications coming up for determination in this ruling. The Applicant/tenant's application dated 27.10.2021 seeks an order staying the implementation of the notice of termination dated 10.9.2021 pending the hearing of the reference or in the alternative, the Respondents be ordered to pay the tenant for business losses at the rate of Kshs. 250,000/= per month from the date of filing suit.
2. The application dated 16.11.2020 by the landlord (Head tenants) seeks orders to the effect that the orders obtained by the tenant be declared null and the landlords/Respondents notice to vacate the suit premises be allowed. The Applicants in that application have also sought an order that the tenant vacates the suit premises unconditionally and in default, be ejected therefrom.
3. The tenant/Applicant's application dated 13.12.2021 seeks orders that the agreement between the Applicants and the tenant be deemed to have terminated, a further order of injunction restraining the Respondents from interfering with his tenancy and an order that he is allowed to enter into a formal tenancy with the landlord while paying rent directly to the said landlord.



### **Tenant's Deposition**

4. In support of his two applications, the tenant has sworn affidavits wherein he has deposed that he has an agreement with the Respondents for a period of three years from 26.9.2019.
5. The tenant has also deposed that the Respondents have served him with a notice to terminate tenancy dated 10.9.2021. It is the tenant's view that there is no lawful cause for the termination/threatened eviction.
6. The tenant has deposed on his second affidavit in support of the notice dated 13.12.2021 that after filing this suit, the tenant started paying rent for the premises directly to the landlord.
7. It is the tenant's view that as soon as he started paying rent directly to the landlord, the tenancy between him and the Respondents was frustrated or violated and/or rescinded by conduct.
8. The tenant therefore deposes that he is no longer a tenant of the Respondents and he is in the process of formalizing his tenancy relationship with the landlord.

### **The Respondent's Depositions**

9. In support of their application dated 16.11.2022 and in response to the tenant's application dated 13.12.2022, the Respondents have filed affidavits wherein they have deposed that they are not landlords of the suit premises but tenants who had sublet a section of the premises to the tenant/Applicant for a period of three years.
10. The Respondents (Applicants in the application) have deposed that the three years lapsed in September 2022 and the tenant has been duly served with a reminder that his tenancy would so lapse but he has vehemently refused to vacate the premises.
11. The Respondents therefore depone that there is no binding agreement between them and the tenant and he should be advised to vacate the premises.
12. That the reason why the Respondents had sought to terminate the tenancy was because their own tenancy was terminating on 30.9.2021.
13. That thereafter, after the tenant objected, the landlord extended the tenancy by one extra year to enable the subtenant complete his three year tenancy.
14. That the sub tenancy expired on 30.9.2022 and the sub tenant's continued occupation of the premises is unlawful.
15. That the act of the tenant paying rent directly to the landlord does not confer on him any tenancy status with the landlord and he has none anyway.
16. That the tenant has another business premises in Karatina known as "Andes Investments" and it is therefore not true that he does not have any other source of income.

### **Issues for Determination**

17. The issues that arise for determination in the applications are in my humble view, the following:-
  - a. Whether the tenancy between the tenants and the Respondents has expired.
  - b. Whether the tenant ought to be ordered to vacate the suit premises.



- c. Whether the tenant is entitled to an order allowing him to enter into a formal relationship/tenancy with the landlord of the suit premises.
- d. What orders ought to issue in the circumstances.

#### **Issue A**

- 18. The tenancy agreement between the parties is the one dated 26.9.2019. It is a sub tenancy for three years and clause 5(1)(c) thereof provided that on expiry or determination of the tenancy, the sub tenants will deliver up possession of the said premises in a state of vacant possession and in good tenantable condition. The tenancy agreement between the parties expired on or about 26<sup>th</sup> September 2022. The relationship between the parties expired by effluxion of time as there is no evidence that the tenancy period was mutually extended. The fact that the tenant continued paying rent to the landlord directly after the expiry of the lease cannot in the circumstances of this case create a tenancy in excess of or outside the time period set out in the lease between the parties.
- 19. The proper presumption to make is that the sub-tenant was only allowed by the lease at clause 5(9) to continue paying rent directly to the landlord only during the existence or life of his sub tenancy with the Respondents. Clause 5(9) has to be read together with clauses 2 and 5(c) of the lease agreement to get the full meaning and import of the whole lease agreement. Indeed, the sub-tenant himself in his application dated 13.12.2021 seeks an order that his tenancy with the Respondents be deemed as terminated, I grant him that order and reach the finding that; YES, the tenancy between the sub tenant and the Respondents expired/terminated on or about September 2022.

#### **Issue B**

- 20. In view of the finding at paragraph 19 above, I do not find any difficulties in further finding that the tenant ought to vacate the premises as after the expiry of the lease in September 2022, his status changed from that of a tenant to that of a trespasser. The tenant to this court, seems to be an ungrateful person who now wants to take advantage of his earlier entry into the premises to remain there even after his lease/agreement with the Respondents had expired.

#### **Issue C**

- 21. The tenant has sought an order that the Tribunal allows him to enter into a formal agreement with the main landlord. To begin with, I do not think the tribunal has the powers to make such an order. The main landlord who remains undisclosed is not a party to these proceedings. I have no authority to compel him into a lease agreement with the sub tenant. I think though, that, if the Applicant is desirous of pursuing the main landlord for a tenancy of the suit premises, that is a matter best left between them.

#### **Issue D**

- 22. In view of the above findings, I do make the following orders:-
  - a. That the tenancy between the parties herein has expired.
  - b. That the tenant/Applicant (Robert Kanyeki Gikonyo) will render vacant possession of the premises to the Respondents within the next sixty days failing which the Respondents will be at liberty to evict him using a licensed auctioneer.
  - c. That the tenant will continue paying rent for those two months.



- d. That the tenant shall bear the costs of the applications and complaint assessed at Kshs. 30,000/=  
=.

**RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 5<sup>TH</sup> DAY OF MAY 2023**

**HON. CYPRIAN MUGAMBI**

**CHAIR PERSON**

**5.5.2023**

In the presence of:-

Parties absent

