



Sifuna v Njibu & another (Suing on behalf of the Estate of the Late Njibu Waweru - Deceased) (Tribunal Case E021 & E035 of 2024 (Consolidated)) [2024] KEBPRT 806 (KLR) (3 June 2024) (Ruling)

Neutral citation: [2024] KEBPRT 806 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E021 & E035 OF 2024 (CONSOLIDATED)**

A MUMA, MEMBER

JUNE 3, 2024

BETWEEN

SAMMY WEKESA SIFUNA TENANT

AND

MARIAM WAMBUI NJIBU & CHARLES NJENGA NJIBU (SUING ON BEHALF OF THE ESTATE OF THE LATE NJIBU WAWERU - DECEASED) 1ST LANDLORD

CHARLES NJENGA NJIBU 2ND LANDLORD

SUING ON BEHALF OF THE ESTATE OF THE LATE NJIBU WAWERU - DECEASED

RULING

A. Parties And Their Representatives

1. The Applicant, Sammy Wekesa Sifuna is the Tenant of a portion of space on Land Parcel No. L.R./KAMBAA/13 (the “suit property”) for the business known as Kambaa Community Medical Centre (the “Tenant”).
2. The firm of B.N. Ibabu & Associates Advocates represents the Tenant in this matter
3. Miriam Wambui Njibu and Charles Njenga Njibu are the beneficiaries of the estate of the late Njibu Waweru (Deceased) who is the registered owner of the suit property (the “Landlords”).
4. The firm of Odero & Partners Advocates represents the Landlords in this matter.



B. Background Of The Dispute

5. Through a Reference dated 5th January, 2024 and an Application dated 9th January, 2024 canvassed through Certificate of Urgency of even date, the Tenant moved this Honourable Tribunal seeking the following orders that inter-alia: the Landlords be prohibited from interfering with the Tenant's peaceful occupation of the suit premises, the Notice to Terminate dated 11th December, 2023 be declared defective, null and void and the Landlords be prohibited with interfering with/altering the terms of the tenancy.
6. Upon perusal of the Application and Reference, the Honourable Tribunal, on 10th January, 2024, issued the following orders ex-parte: pending inter-parties hearing the Landlord be prohibited from interfering with the Tenant's peaceful occupation of the suit premises and an inter-parties hearing of the Application set for 24th January, 2024.
7. Similarly, the Landlords herein instituted the Tribunal suit no. Nairobi Tribunal Case No. E035 Of 2024 against the Tenant through a Reference and Application dated 10th January, 2024 canvassed through a Certificate of Urgency of even date. The Landlords sought inter-alia: a mandatory order compelling the Tenant to continue paying rent as and when it fell due, mandatory injunction compelling the Tenant to deliver vacant possession of the suit premises and an order allowing the Landlords to enter and repossess the suit premises with the assistance of OCS Kimende Police Station to ensure compliance.
8. Upon perusal of the Landlords Application and Reference, the Honourable Tribunal, on 15th January, 2024, issued the following orders ex-parte: a mandatory order compelling the Tenant to continue paying rent as and when it fell due and hearing be set for 16th February, 2024.
9. In Response to the Landlords' Application and Reference dated 10th January, 2024, the Tenant filed an Application dated 19th January, 2024 canvassed through a Certificate of Urgency of even date, seeking inter-alia: stay of proceedings in Nairobi Tribunal Case No. E035 Of 2024, consolidation of Nairobi Tribunal Case No. E035 OF 2024 with the suit herein and the Honourable Tribunal do set aside the order compelling the Tenant to pay rent.
10. Upon perusal of the Tenant's Application dated 19th January, 2024, the Tribunal on 22nd January, 2024, certified the matter as urgent and directed that it be heard on 7th February, 2024.
11. Due to non-appearance by the Tenant on 24th January, 2024, the Tribunal dismissed the Tenant's Reference dated 5th January, 2024 and Application dated 9th January, 2024. Consequently, the Tenant, filed an Application dated 24th January, 2024 canvassed through a Certificate of Urgency of even date, sought the suit be reinstated and the orders issued on 10th January, 2024 be extended.
12. Upon perusal of the Tenant's Application dated 24th January, 2024, the Honourable Tribunal, on 26th January, 2024, directed that an inter-parties hearing be held 21st February, 2024.
13. Further the Tenant herein filed a Notice of Preliminary Objection dated 30th January, 2024 in which he challenged the legality of the Landlords' notice to terminate and Application. He also raised the question of jurisdiction of the Tribunal to entertain the Landlords' Reference and Application.
14. The Landlords', in response to the Notice of Preliminary Objection, filed a Replying Affidavit dated 5th March, 2024.



15. On 20th March, 2024, the Tenant's Application dated 24th January, 2024 to reinstate the Tenant's Reference dated 5th January, 2024 and Application dated 9th January, 2024 was allowed. Consequently, the Tribunal directed the Landlords to file their response.
16. In response, the Landlords' filed a Replying Affidavit sworn by Miriam Wambui Njiru on 8th April, 2024.
17. The Honourable Tribunal, on 20th March, 2024, directed the parties to file Submissions. The Tenant filed its Submissions on 15th April, 2024 in support of the Application dated 9th January, 2024 while the Landlords filed their Submissions on 23rd April, 2024 in opposition of the said Tenant's Application.
18. Therefore, it is the Tenant's Application dated 9th January, 2024, the Landlords' Application dated 10th January, 2024 and the Tenant's Notice of Preliminary Objection dated 30th January, 2024 which is subject of this Ruling.

C. Tenant's Case

19. The Tenant avers that the Landlords irregularly issued a Notice to terminate his tenancy contrary to the lease agreement between itself and the late Njiru Waweru (Deceased).
20. The Tenant, in his Affidavit sworn on 9th January, 2024, deposes that the Landlords don't have locus to represent the Estate of the Deceased as they are not yet to obtain Letters of Administration.

D. Landlords' Case

21. The Landlords aver that they are the beneficiaries of the Estate of the Deceased hence responsible for managing and operating the estate of the Deceased which includes the suit property.
22. The Landlords aver that the Tenant entered into a lease agreement with the Deceased. They further averred that the agreed terms of the lease were that, on taking occupation of the suit premises, the Tenant would conduct renovation of the premises for a period of three (3) months at a cost of Kshs. 462,000.00. The Landlords stated that the costs of the renovations would be set off from the rent payable to the Deceased at a rate of Kshs.13,000.00 per month for a period of three years. After which the rent would increase to Kshs. 17,500.00 for a further 2 years.
23. The Landlords claim that the Tenant has since neglected paying rent and was in arrears of Kshs. 420,000.00 as at January 2024.
24. The Landlords further aver that the Tenant has continuously neglected to pay its monthly rent. As such, the Landlords were forced to issue a Notice dated 11th December, 2023 terminating the tenancy and the same was to take effect on 1st March, 2024.

E. Jurisdiction

25. The Jurisdiction of this Honourable Court has been contested by the Tenant's vide a Notice of Preliminary Objection dated 30th January, 2024.
26. It is the Tenant's contention that the Landlords' Notice dated 11th December 2023 and Application dated 10th January, 2024 were improperly issued and filed respectively.

F. List For Issues For Determination

27. Having carefully perused the Pleadings presented before this Honourable Tribunal by the parties. It is therefore my respectful finding that the issues for determination before this Honourable Tribunal are:



- a. Whether the Notice to Terminate dated 11th December, 2023 was properly issued by the Landlords/Landlords
- b. Whether the Tenant is entitled to the orders sought in the Application dated 9th January, 2024

G. Analysis And Determination

- a. Whether the Notice to Terminate dated 11th December, 2023 was properly issued by the Landlords/Landlords
28. The Landlords herein issued a Notice dated 11th December, 2023 terminating the Tenant's tenancy from the suit property which was to take effect on 1st March, 2024. The Tenant contends that the said Notice was issued irregularly as the Landlords, though beneficiaries of the estate of the Deceased, have not been obtained and/or been issued with Letters of Administration.
 29. This Honourable Tribunal notes that nature of the tenancy relationship herein is not in dispute. Neither is it in dispute that the Landlords herein are the beneficiaries of the estate of the Deceased. The core issue for determination is whether the Landlords herein are "Landlords" within the meaning of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Cap 301 and as such, if they are capable of issuing the Notice of Termination of the Tenancy.
 30. Under Section 2 of Cap 301, a Landlord is defined as:

"Landlord", in relation to a tenancy, means the person for the time being entitled, as between himself and the tenant, to the rents and profits of the premises payable under the terms of the tenancy (emphasis added)"
 31. This Honourable Tribunal concurs with the Landlords claims as Landlords of the of the suit premises as they are entitled to the rents and profits of the premises. Which entitles them to issue a Notice.
 32. In its mandate to preserve the Deceased's estate, this Honourable Tribunal is empowered to investigate any complaint raised either by the Tenant or Landlord with regards to a controlled Tenancy, this is as under Section 12 (4) of Cap 301 which provides that:
 - (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."
 33. In its esteemed view, This Honourable Tribunal observes that the death of a Landlord does not preclude a Tenant from continuing to paying the rents as and when due under the Terms of the Tenancy Agreement. The Landlords' failure to obtain Letters of Administration is not a sufficient enough reason for the Tenant to not pay rent. Deviation in payment of rent on account of death of a Landlord would be a gross breach of the covenants of the Tenancy Agreement.
 34. It is the contention of the Landlords that the Tenant was in arrears of Kshs. 420,000.00 as at January, 2024 having paid Kshs. 45,000.00 only. While it is the argument of the Tenant that he has been observing his part of the Agreement and is not in any arrears as claimed. However, neither party have supplied this Honourable Tribunal with any proof of payment or receipts of said payment. As such, it cannot establish the outstanding rent arrears, if any, owed by the Tenant.
 35. Therefore, in exercising its powers as provided under Section 12 (4) of Cap 301, this Honourable Tribunal hereby mandates the Tenant to furnish this Honorable Tribunal with records of payment of rent and the account to which he has been paying the rent up to May, 2024.



H. Determination

36. In the upshot and having reviewed Pleadings and evidence presented before this Honourable Tribunal, the following orders shall abide;
- a. The Tenant's Reference dated 5th January, 2024 and Application dated 9th January, 2024 is hereby partially allowed to the extent that the Tenant provides proof of payment of rent from the time the Deceased died;
 - b. The Tenant shall furnish this Honorable Tribunal with records of account payment of the rent;
 - c. The Landlords' Application and Reference dated 10th January, 2024 will be heard together with the Tenants reference;
 - d. The Landlords are hereby prohibited from interfering/ altering the terms of the Tenancy pending full hearing and determination;
 - e. The Tenant to pay the rent for the month of June 2024 to an account provided by the Landlords' Advocates; and
 - f. The matter is fixed for hearing on June 27, 2024.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, delivered and signed at Nairobi on this 3rd day of June 2024 in the presence of Chepkemai holding brief for the Odera for the Landlord in the absence of the Tenant.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

