



**Nduku v Njuguna (Tribunal Case E933 of 2022)  
[2023] KEBPRT 344 (KLR) (Civ) (22 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 344 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E933 OF 2022  
A MUMA, VICE CHAIR  
MAY 22, 2023**

**BETWEEN**

**JEREMIAH NDIRANGU NDUKU ..... TENANT**

**AND**

**GEOFFREY KIARIE NJUGUNA ..... LANDLORD**

**RULING**

**A. Parties and Representatives**

1. The Applicant Jeremiah Ndirangu Nduku is the Tenant of the suit property and rented out space known as Bar/ Hotel erected on Ruiru/ Ruiru East Block 2/515 (hereinafter known as the ‘Tenant’).
2. The firm of Mugo Githinji and Company Advocates represents the Tenant in this matter.
3. The Respondent Geoffrey Kiarie Njuguna is the Landlord and owner of the suit property and rented space for business to the tenant.
4. The firm of Ngari & Kaburu Advocates represents the Landlord/ Respondents in this matter.

**B. The Dispute Background**

5. The Landlord and the tenant entered into a sub-lease dated August 31, 2021 for payment of monthly rent of Kenya Shillings Eighteen Thousand Only (Ksh 18,000).
6. The sub- Lease was to subsist for a period of Three (3) Years Nine (9) Months from August 1, 2021 to February 28, 2025.



7. The Landlords however issued a notice dated October 11, 2022 seeking to terminate tenancy on the grounds that they intended to renovate and develop the suit premises and that the tenant had persistently defaulted in rent payment.
8. The Tenant then opposed the same in via a reference dated October 14, 2022 and an application seeking orders restraining the Landlord from interfering with the tenant's enjoyment and occupation of the premises.
9. The Tenant moved this Honorable Tribunal vide a Notice of Motion under a Certificate of Urgency dated October 4, 2022 seeking orders that:
  - i. That the Application be certified as urgent and the same be dispensed with in the first instance.
  - ii. That pending the hearing and determination of the application, the Landlord/ Respondent and /or his servants, agents or employees be are hereby restrained from terminating the tenancy and or in any way interfering with the tenant's enjoyment and occupation of the premises and the bar/ restaurant erected on LR No Ruiru/ Ruiru East Block 2/515.
  - iii. That the cost of the application be borne by the Landlord/Respondent.
10. The Tribunal through an Order dated January 26, 2023 ordered that the Landlord /Respondent or his servants, agents or employees be restrained from terminating the tenancy and or in any way interfering with the tenant's enjoyment and occupation of the premises and the bar/restaurant erected on LR No Ruiru/ Ruiru East Block 2/515 pending hearing of the application inter-partes.

### **C. The Tenant's Claim**

11. The Tenant avers in that the Landlord served a notice to terminate the tenancy with effect from the October 31, 2022 on the grounds that the tenant has persistently defaulted rent payment and he intends to renovate and develop it for his own use.
12. The Tenant claims that the Landlord's notice of termination of tenancy is illegal and contrary to the provisions of the *Landlord and Tenant (Shops, Hotel and Catering Establishment) Act*, Cap 301.
13. The Tenant further avers that the Landlord visited the premises and interfered with his use and occupation of the premises where he operates a bar/restaurant.
14. The Tenant also avers that he has always remitted the rent amount on time and promptly through cash or Mpesa but no receipts have been issued by the Landlord.
15. The Tenant further avers that he has substantially invested in the business being operated in the premises thereby creating substantial goodwill and the Landlord intends to illegally acquire the same and sell it off to another Tenant.

### **D. The Landlord's Claim**

16. It is the Landlord's case that the Tenant has continuously disregarded the terms of the Lease Agreement dated August 31, 2021 by failing to pay a monthly rent of Ksh 18,000.
17. That the Tenant has not adduced any evidence of payment of rent despite alluding that payment is done through cash or M-pesa.



18. The Landlord avers that issuing the notice to terminate the sub-lease agreement is well within his rights pursuant to clause 10 of the sub-lease agreement and section 4 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishment Act\)](#).
19. That he has demonstrated that the Tenant is non-compliant and he lacks no remorse to those he has hurt or inconvenienced.
20. The Landlord avers that the fact that the Tenant has invested in the premises, the same does not exempt him from honoring his obligations as a Tenant.
21. That the notice issued to terminate the sub-lease is in the prescribed form and it strictly complies with the law and as per the provisions of the [Landlord and Tenant \(Shops, Hotel and Catering Establishment\) Act](#), Cap 301.
22. That the tenant is dishonest and that the application has been brought in bad faith and in violation of the dictates of the Principle of equity- He who seeks equity must come with clean hands.
23. The Landlord prays that the Application be dismissed with costs.

#### **E. Jurisdiction**

24. The jurisdiction of this Tribunal is not in dispute.

#### **F. List of Issues for Determination**

25. The issues raised for determination are as follows;
  - a) Whether the Notice to Terminate tenancy issued by the Landlord is legal and should be upheld?
  - b) Whether the Landlord has met the requirements of Section 7(1) (f) of the Act?

#### **G. Analysis and Findings**

##### **Whether the notice to terminate tenancy issued by the landlord is legal and should be upheld?**

26. Section 4(2) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) which states 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."
27. Section 4 (4) further provides that

"No notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party and shall be specified therein....."
28. The tenant herein was served with a notice to terminate tenancy by the landlord on October 11, 2022 requiring that the tenant hand over vacant possession of the premises for renovation purposes and for reason that he has persistently defaulted payment of rent. The notice was to take effect on 1<sup>st</sup> of January 2023. To that extent, the notice issued by the Landlord is valid as it satisfies the minimum statutory required period of two months.



29. Section 4(5) of Cap 301 states that upon issuance of a notice to terminate tenancy the receiving party shall 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. The tenant filed a reference dated October 14, 2022 with this Honourable Tribunal opposing the same.

**Whether the landlord has met the requirements of section 7(1) of the Act?**

30. It is notable that the tenancy relationship between the Landlord and the Tenant has irretrievably broken- down. The Respondent avers that the Applicant has continuously failed to pay rent as and when it becomes due. A careful perusal of the annexures filed by the Landlord, it is clear that there was little or no payment of rent for the year 2022. In other words, tenant is in default as no receipts or mpesa statements show that rent is paid on time. Instead, the tenant is interestingly asking the Landlord to produce the rent book.
31. The tenant did not file any document to evidence payment. Section 7 (1) (b) provides for grounds on which the landlord may terminate tenancy which include default in payment of rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable.
32. The Landlord's has annexed Mpesa statements which are unopposed by the tenant and show inconsistencies in rent payment.
33. Further, Section 7(1)(f) of the Act provides that a Landlord may issue a termination notice where he/ she intends to demolish or reconstruct the premises comprised in the tenancy, or carry out substantial work of construction on such premises or part thereof, and could not reasonably do so without obtaining possession of such premises. We however take note that the Landlord has not submitted any proof on the state of the building or funds and approvals for intended substantial work of construction and developments, this argument then collapses.
34. In light of the foregoing, I therefore proceed to order as follows;

**H. Orders**

- a. The upshot is that Tenant's Application and Reference dated October 14, 2022 are hereby dismissed in the following terms;
- b. The tenant shall clear any arrears owed within 7 days.
- c. The Tenant shall vacate and hand over possession of the premises to the landlord on or before June 30, 2023.
- d. Each party shall bear their own costs.

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

**Ruling dated, signed and delivered virtually by Hon A. Muma this 22nd Day of May 2023 in the presence of Mwikali for the Tenant and no Appearance the Landlord.\*\***

**HON A. MUMA**

**VICE CHAIR**



## **BUSINESS PREMISES RENT TRIBUNAL**

