



**Munge v Njoka (Tribunal Case E059 of 2022)
[2024] KEBPRT 1446 (KLR) (2 October 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1446 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E059 OF 2022
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
OCTOBER 2, 2024**

BETWEEN

POLINE WAIRIMU MUNGE TENANT

AND

LUCY MUTHONI NJOKA LANDLORD

JUDGMENT

A. Dispute Background

1. The tenant/applicant moved this Tribunal vide a Reference dated 13th December 2022 pursuant to Section 6(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301, Laws of Kenya objecting to the Landlord's notice to terminate tenancy dated 24th November 2022. The said notice was expressed to take effect on 1st February 2023.
2. The tenancy notice is based on the grounds that the landlord's family wants to develop the plot from workshops to residential rentals which will fetch more income. The landlord further cites malicious damage to property as a second ground stating that the case was with the police.
3. In a ruling delivered on 28th July 2023, this Tribunal inter-alia directed both parties to file and exchange witnesses' statements and any documents intended to be used at the hearing of the main reference. Following the said directions, the landlord filed her witness statement together with a list and bundle of documents both dated 2nd November 2023. The tenant subsequently filed her undated witness statement.
4. On 23rd April 2024, the tenant's Counsel sought for further directions that the matter be disposed of by way of written submissions. The parties were each given 21 days to file their respective submissions and the matter was therefore fixed for mention on 4th June 2024 to confirm compliance.



5. On 4th June 2024, both parties were absent as a result of which the matter was fixed for further mention on 3rd July 2024. On the subsequent date, the parties had not complied and only the landlord appeared as a result of which they were given a further 21 days to comply. The matter was therefore set down for mention on 26th August 2024.
6. On 26th August 2024, only the tenant attended and indicated that she had uploaded her submissions on the e-filing portal. The submissions of the tenant are dated 20th August 2024 and the submissions for the landlord are dated 30th August 2024. Consequently, the matter was fixed for judgement on 2nd October 2024.

B. Issues for determination

7. The following issues arise for determination; -
 - a. Whether the tenancy notice issued by the landlord ought to be approved or dismissed.
 - b. Whether the tenant's reference ought to be allowed or dismissed.
 - c. Who shall bear the costs of the reference?

Issue a) Whether the tenancy notice issued by the landlord ought to be approved or dismissed.

8. As observed above, the tenant/applicant moved this Tribunal vide a Reference dated 13th December 2022 pursuant to Section 6(1) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301, Laws of Kenya objecting to the Landlord's notice to terminate tenancy dated 24th November 2022. The said notice was expressed to take effect on 1st February 2023.
9. The tenancy notice is based on the grounds that the landlord's family wants to develop the plot from workshops to residential rentals which will fetch more income. The landlord further cites malicious damage to property as a second ground of termination stating that the case was with the police.
10. In a ruling delivered on 28th July 2023, this Tribunal inter-alia directed both parties to file and exchange witnesses' statements and any documents intended to be used at the hearing of the main reference. Following the said directions, the landlord filed her witness statement together with a list and bundle of documents both dated 2nd November 2023. The tenant subsequently filed her undated witness statement.
11. On 23rd April 2024, the tenant's Counsel sought for further directions that the matter be disposed of by way of written submissions.
12. It is not contested that the tenancy herein is controlled within the meaning and interpretation of Section 2(1) of Cap 301, Laws of Kenya. Sections 4(1) & (2) of the said statute provides as follows;
 - “(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with the following provisions of this Act.
 - (2) 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.”

13. We have looked at the tenancy notice served upon the tenant and confirmed that the same is in tandem with the foregoing legal provisions. The same is therefore valid.

14. Section 6(1) of the same statute provides as follows;

“6. Reference to Tribunal

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.”

15. In compliance with the foregoing legal provision, the tenant filed the instant reference objecting to the notice. This Tribunal is therefore required to inquire into the said notice and decide whether or not, the reasons set out therein have been proved by the landlord in line with Section 9(1) of the said statute.

16. The ground for termination of tenancy set out in the landlord’s tenancy notice is provided for under Section 7(1)(f) of the said statute which provides as follows;

“(f) 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.”

17. In her witness statement, the landlord states that the tenant is troublesome and disrespectful and that he has been in continuous breach of the tenancy terms like not paying rent in time, not paying rent at all and being a nuisance to other tenants and to her.

18. According to the landlord, the tenant’s breach of tenancy reached a crescendo leading to the filing of BPRT NO. 71 OF 2019 in which a consent on rent payment was reached.

19. It is the landlord’s case that there was a fire incident affecting the premises in October 2022 by which time, the tenant was in rent arrears of Kshs 200,000/= and that what she claims to have lost in the fire is a mere imagination.

20. The tenant is said to have hired goons to destroy a structure that was being built by the landlord in which the latter lost property valued at Kshs 80,000/=. The incident was reported at Embu Police Station. The tenant’s son is accused of threatening to kill the landlord claiming that the suit property belonged to them.

21. It is on the basis of the foregoing facts that the landlord issued the impugned notice to terminate tenancy. The tenant is accused of failing to pay rent after obtaining orders to stay the termination notice.



22. On the other hand, the tenant contends that she has been in occupation of the suit premises since the year 2011 where she has been carrying out the business of a furniture workshop. She contends that she has been paying rent diligently and dutifully and has never fallen into rent arrears. The landlord had issued a tenancy notice in 2019 but a consent was recorded thereon. She has since abided by the terms of the consent.
23. The tenant claims to have lost KShs 1 Million in stock after the suit premises was affected by a fire incident in Shauri Yako Market. She avers that he did not work for six (6) months. The landlord was unable to repair the premises and the tenant spent KShs 200,000/= to construct two (2) stalls.
24. According to the tenant, the tenancy notice is not supported by any documentation for example approvals from the relevant authorities and architectural plans and drawings. On the issue of malicious damage, the tenant claims that it is fabricated and unsubstantiated.
25. It is the tenant's case that the tenancy notice is malicious and unfounded. She continues to pay rent as shown by the Mpesa statements in her list of documents. She concludes by stating that the tenancy notice is unfounded and in bad taste and prays for its dismissal.
26. The issues raised in the witnesses' statements are repeated in the parties' respective submissions.
27. We agree with the tenant that the landlord ought to have provided evidence to prove that she intends to develop the suit property from a workshop into residential rental premises. Instead, the landlord abandoned the grounds set out in her tenancy notice by stating that the tenant is troublesome and disrespectful and that he has been in continuous breach of the tenancy terms like not paying rent in time, not paying rent at all and being a nuisance to other tenants and to her.
28. We further agree with the tenant that the tenancy notice is not supported by any documentary evidence for example, approvals from the relevant authorities and architectural plans and drawings to demonstrate a settled intention to undertake the alleged development of residential rental houses in line with the decision in *Auto Engineering Ltd Vs Gonella & Co. Ltd* (1978) eKLR where it was held as follows;

“The first authority to which Mr Esmail referred us in connection with this part of his appeal was *Fisher v Taylors Furnishing Stores Ltd* [1956] 2 All ER 78, and he referred us to a passage from the judgment of Morris LJ at page 81, in reference to section 30(1)(f) of the Landlord and Tenant Act 1954, which is as follows:

“There must, therefore, be an intention and it must be an intention which in point of time is related to the termination of the current tenancy. It seems to me that the intention must be to do one of the following things: (i) to demolish the premises comprised in the holding; or (ii) to reconstruct the premises comprised in the holding; or (iii) to demolish a substantial part of the premises comprised in the holding; or (iv) to reconstruct a substantial part of the premises comprised in the holding; or (v) to carry out substantial work of construction on the holding; or (vi) to carry out substantial work of construction on a part of the holding.”
(Emphasis added)

29. It is also not demonstrated that the landlord has the requisite financial resources to undertake the alleged development and that the same shall take place immediately as to require the tenant to give vacant possession.
30. In view of the foregoing, the tenant's reference dated 13th December 2022 ought to be allowed and the notice issued to her by the landlord be disapproved in line with Section 9(1) of Cap 301.



Issue (b) Who shall bear the costs of the reference?

31. As regards costs, the same are in the Tribunal's discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall award costs of the reference to the tenant/applicant.
32. Before concluding this reference, we have noted that the landlord has insisted that the tenant is not paying rent for her occupation and use of the suit premises following the orders earlier granted in this matter. We must in that regard state that the tenant is obligated to pay rent and the landlord is at liberty to use lawful means to enforce payment thereof including distress without the necessity of obtaining leave of this Tribunal before doing so. Nowhere did this Tribunal stop the tenant from paying rent.

C. Orders

33. In view of the above analysis, the final orders which commend to us are;
 - a. The tenant's reference and application dated 13th December 2022 is hereby allowed and the notice of termination of her tenancy disapproved.
 - b. The landlord shall not issue any other notice based on the same grounds in the next Twelve (12) months in line with Section 9(3) of Cap 301, Laws of Kenya.
 - c. The landlord shall pay costs of Kshs 25,000/= to the tenant which shall be defrayed against the rent account.
 - d. The tenant is obligated to pay rent and the landlord is at liberty to use lawful means to enforce payment thereof including distress without the necessity of obtaining leave of this Tribunal before doing so

It is so ordered.

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 2ND DAY OF OCTOBER 2024

HON. GAKUHI CHEGE

(PANEL CHAIRPERSON)

HON JOYCE AKINYI OSODO

(MEMBER)

BUSINESS PREMISES RENT TRIBUNAL

****In the presence of:**

Ngari for the landlord

No appearance for the tenant

