



**Waniu v Ndwiga (Tribunal Case E127 of 2021)
[2023] KEBPRT 17 (KLR) (Civ) (1 February 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 17 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E127 OF 2021
A MUMA, VICE CHAIR
FEBRUARY 1, 2023**

BETWEEN

ELIZABETH NJERI WANIU APPLICANT

AND

NAZERINA MUTHONI NDWIGA RESPONDENT

RULING

B. Background of the dispute

1. The tenant moved this honorable tribunal on October 24, 2022 vide a Notice of Motion dated October 24, 2022 seeking orders that:
 - a. That the application be certified as urgent and service thereof be dispensed with in the first instance.
 - b. That an order of injunction restraining the landlord, their agents, assigns, employees and/or servants from selling and/or disposing by public auction or any other means, the tenant's business premises and/or property
 - c. That an order restraining the landlord/ respondent from interfering with the peaceful occupation and operation of the tenant's/ applicant peaceful occupation and operation of her business in any manner
 - d. That the OCS Nyeri police station be ordered to supervise and ensure compliance of the orders and ensure that peace prevails to enable the tenant to continue with her business operation.

The tribunal through an order dated November 14, 2022 granted prayers 1,2,5,6,7 which orders, among others, certified the application as urgent; restrained the landlord from interfering with the



tenant's peaceful occupation and operation of her business in any manner pending the hearing and of the application *inter partes*.

C. Tenants' case

2. The tenant deposed that the landlord intends to illegally sell the suit premises where she operates a butchery and hotel business.
3. The tenant/ applicant further averred that she was served with a defective notice which did not indicate justifiable grounds for termination.
4. The tenant also avers that she has invested in the premises, incurring costs of renovation forcing her to apply for loan of Kshs. 1,200,00/= which she is still servicing to date. The tenant/ applicant argues that the unlawful eviction would cause an irreparable loss and damage.

D. Landlords' case

5. In response to the application, the landlord/ applicant vide the replying affidavit dated November 1, 2002, averred that the application is misconceived, vexatious, bad in law and an abuse of court process. The landlord disputed the allegations that the termination notice was defective stating that the same was valid clearly indicating the grounds for termination.
6. The landlord further contends that the tenant /applicant never raised any objection within the stipulated time, only for her to file an application after the expiry of the notice to terminate tenancy terming the act an afterthought.
7. The landlord contents that, contrary to the allegations by the tenants, that the landlords intended to forcefully evict them, the correct position is that they issued the tenants with a Notice to vacate the suit premises. She further contends that there was no agreement between the tenant and the landlord to renovate the suit premises and neither did she obtain consent from the county council to carry out the said renovations.
8. It is the landlord/ respondent case that it is upon the expiry of the landlord's Notice to terminate tenancy that she proceeded to submit her request for transfer of the suit premises to suit Eunice Wanjiku Maina after clearing all outstanding unpaid balances. That the suit premises is now registered under the said buyer.

E. Submissions

9. Counsel for the tenant/ applicant indicated that they would rely on the pleadings filed. The landlord/ respondent however, filed submissions.

F. Analysis & determination

10. The application and the affidavit filed by the tenant/applicant raises fundamental issues discussed herein below:

Whether the tenancy termination was valid and duly served?

Section 4(2, 4) of the [Land and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) chapter 301 Laws of Kenya states that:

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. No tenancy shall take effect until such date, not being less than two months after the receipt thereof by the receiving party.

From the foregoing, it is clear that a notice to terminate or alter the term of a controlled tenancy must be issued not less than two months to the tenant

11. The evidence tendered before this honourable tribunal indicates that the landlord complied with the aforementioned provision as the termination notice was issued on July 27, 2022, to take effect on October 1, 2022. I have examined the validity of the notice issued and I hold that it was valid. The notice met the requirements as stipulated under section 4 of cap 301, as it accorded the tenant two months within which to vacate. Accordingly, the same is deemed to be valid.
12. The tenant/applicant in this matter claims that she was served with a defective notice that did not disclose reasonable grounds for termination. Despite receiving the termination notice, the defendant decided to sleep on her right by failing to raise any objection on the same within the prescribed time.
13. Further, section 4(5) provides that where the receiving party seeks to object or notify the requesting party whether or not they agree to comply with the notice they should do so within a month. No evidence has been presented before this tribunal indicating that the tenant/applicant responded to the Landlord on whether they intend to comply or not.
14. It has also come to my attention that the tenant in this matter did not file the reference within the prescribed time as prescribed under section 6(1) of the Act which should be before the notice issued takes effect. This application was however, filed after the Notice period had already lapsed and as such the Notice is deemed to have taken effect. The application before this honourable tribunal was filed on October 24, 2022 while the notice took effect on October 1, 2022. By this time, the tenancy relationship between the parties had legally ended by virtue of the notice taking effect before a reference.
15. The tenant/ applicant further avers that the process server who was contracted to effect service of the notice is a stranger to her whereas there is a valid affidavit of service filed by the process server on record and as such, the tenant is being economical with the truth.
16. This tribunal therefore convinced that the applicant was duly served with a notice dated July 27, 2022 and I uphold the validity of the said notice. With this finding I need not go to the reasons but even if I choose to the reasons advanced is that the sale has indeed gone through as such it is too late in the day to reinvent the wheel. It is and only fair that the new owner decides what he or she wants to do with the said property.

Orders

- a. The upshot is that the tenant's application and reference dated October 24, 2022 is hereby dismissed.
- b. The tenant shall hand over vacant possession of the premises to the Landlord within 14 days from the date of this ruling, failure to which the Landlord shall be at liberty to break in and take vacant possession with the assistance of OCS Nyeri police.
- c. I give no orders as to costs.

HON A MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL



RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 1ST DAY OF FEBRUARY 2023 IN THE PRESENCE OF MSHILA FOR THE LANDLORD AND IN THE ABSENCE OF THE TENANTS.

HON A MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

