



Stanhope Engineers Limited v Estate Of Karugu Guandai (Tribunal Case E775 & E772 of 2023 (Consolidated)) [2024] KEBPRT 1363 (KLR) (11 September 2024) (Judgment)

Neutral citation: [2024] KEBPRT 1363 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E775 & E772 OF 2023 (CONSOLIDATED)
P MAY, MEMBER
SEPTEMBER 11, 2024**

BETWEEN

STANHOPE ENGINEERS LIMITED TENANT

AND

THE ESTATE OF KARUGU GUANDAI RESPONDENT

JUDGMENT

1. The present proceedings commenced through the reference filed by the tenant dated 1st August, 2023. The reference challenged the notice of termination dated 29th March, 2023 but delivered to the tenant on 15th July, 2023. The said notice was to take effect on 1st October, 2023. The tenant stated that the said notice was prejudicial, invalid due to want of authority by the issuing party and that it was bad in law. The present dispute is crosscutting and or convoluted with issues stemming from a contentious succession cause involving the landlord's estate. The Tribunal will therefore exercise its powers within the demarcated limits provided under section 12 of CAP 301.
2. The parties filed their detailed statements and documents before calling witnesses who testified in support of their respective positions. I have summarized the case for each party hereinbelow:

Tenant's case

3. The tenant called three witnesses. The first witness was the tenant himself who is a mechanic operating a garage at the demised premises. He confirmed that he had been at the demised premises since 2008. He stated the landlord was the estate of Karugu Guandai after the demise of the proprietor in 2009. He averred that after the death of the deceased, he was approached by one Mary Njeri Mburu who identified herself as the deceased's advocate and who instructed them to pay rent to Karugu Holdings Limited.



4. It was the tenant's testimony that the said Njeri Mburu began harassing him and the other tenants asking them to sign notices of termination. He stated that in his view the said notices were unfair. He further stated that this prompted him to seek advice from his advocates who confirmed that the said Mburu was not an administrator of the demised premises neither had she been granted the authority to issue the notices. According to him therefore she was intermeddling with the estate of the deceased.
5. The tenant's second witness was one Winfred Nyambura Karugu who described herself as the widow to the deceased. She stated that she got a grant of letters of administration ad litem and colligenda bona and had not authorized anyone to act on her behalf. She therefore maintained that the notices issued were fraudulent. The third witness merely corroborated the evidence tendered by the other two witness.
6. On cross examination, the tenant confirmed that the initial lease between them and the deceased had lapsed in 2013, but he had remained on the demised premises. He stated that upon the demise of the deceased, he had continued to pay rent as instructed by the said Njeri Mburu.
7. The second witness stated on cross- examination that she had never managed the demised premises despite having a grant in her favour. She confirmed that there were ongoing succession proceedings where the now widely mentioned Njeri Mburu was participating as an objector.

Landlord's Case:

8. The landlady, one Njeri Mburu was the sole witness in her case. She stated that she was granted a grant of letters administration ad litem in HC P&A No. 548 of 2011 by the High Court in Machakos. She therefore had the authority to deal with the deceased's property including the demised premises. She maintained that she had been managing the premises even during the lifetime of the deceased proprietor. She maintained that she issued the notices of termination on both the tenant and the sub-tenants which notices were regular, valid and sound in law.
9. She stated that she wanted to use the premises for her own uses as her children had become of age and were not engaged in any gainful employment hence desired to establish business on the demised premises. She therefore urged the Tribunal to uphold the notices.
10. On cross- examination, she confirmed that she did not have a marriage certificate. She stated that she operated the accounts that the rent was being paid to and that she has never received instructions for Winfred to collect rent.

Analysis

11. As stated before and as noted during the hearing, the issues between the parties herein extend to emotive issues which are subject of litigation at the Family Court. The jurisdiction of the Tribunal is circumscribed under section 12 of CAP 301. The Tribunal determines disputes emanating from controlled tenancies.
12. Section 2 (1) of the Act defines controlled tenancy as follows:

“controlled tenancy” means a tenancy of a shop, hotel or catering establishment—

 - (a) which has not been reduced into writing; or
 - (b) which has been reduced into writing and which —
 - (i) is for a period not exceeding five years; or



- (ii) contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
- (iii) relates to premises of a class specified under subsection (2) of this section:

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;”

13. The Landlord and Tenant (Shops, Hotel and Catering Establishments Act) Cap 301 of the Laws of Kenya, is silent on who should or ought to issue the notice under section 4(2) of the said Act in the event of the death of the Landlord;

ection 4(2) is in the following terms;

“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”.

14. Section 2(1) of the said Act defines a Landlord as follows;

“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.”

15. This is the person therefore, who has the capacity to give the notice under section 4(2) of the Act (Cap 301). The notices under challenge have been issued by the advocate who implies to have been in a relationship with the deceased and acted on the strength of a grant issued by the High Court in Machakos. The Deputy Registrar confirmed that the said grant is valid. From the pleadings, the succession dispute is being litigated in various courts but the said grant issued to Njeri Mburu has never been quashed or set aside.

16. The witnesses all confirmed that Njeri Mburu has been collecting rent from the tenants and sub tenants who occupy the demised premises. The Tribunal is therefore satisfied that the said Njeri Mburu is a landlord within the meaning of section 2 of CAP 301.

17. The landlord’s notice to terminate tenancy is brought under the provisions of Section 4(2). The grounds relied upon are those provided under Section 7(1)(G) of Cap 301 which provides as follows:-

“subject as in hereinafter provided, that on the termination of the tenancy, the landlord himself intends to occupy for a period of not less than one year the premises comprised in the tenancy for purposes or partly for the purposes, of a business to be carried out by him therein or at his residence.”

18. Section 7(g) of Cap 301 only relates to the intention of the landlord to occupy the suit premises for the purposes of carrying out a business therein. The landlord has expressed her intention to so occupy the suit premises. The reason she intends to start his own business in the premises for her children as they are not in gainful employment. On this issue, I am satisfied that the landlord has demonstrated the reasons why she intends to take over the suit premises.



19. Pursuant to the provisions of Section 9(1) (a) of CAP 301, I will now make the following orders: -
- a. That the notices of termination dated 29/3/2023 are upheld
 - b. That the tenancy between the parties herein is ordered terminated.
 - c. That the tenant will vacate with immediate effect but not later than 7 days from the date hereof. In default the landlord will be at liberty to forcefully evict the tenant using a licensed Auctioneer.
 - d. The landlord will have the costs of this reference assessed at Kshs. 80,000/=.
 - e. Similar orders will apply to Nairobi BPRT Case No. E772 of 2023.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY OF SEPTEMBER, 2024

HON. PATRICIA MAY

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Thuo for the Tenants and Ms. Chege for the Landlord/Respondent

