



**Imbahale v Ogada (Tribunal Case E184 of 2023)  
[2024] KEBPRT 525 (KLR) (28 March 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 525 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E184 OF 2023  
N WAHOME, MEMBER  
MARCH 28, 2024**

**BETWEEN**

**JANE NYAGANO IMBAHALE ..... TENANT**

**AND**

**KENNEDY OGADA ..... LANDLORD**

**JUDGMENT**

1. This Judgment is on the Applicant's Reference dated 24.11.2023. The same is founded on Section 6 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301) hereinafter "the Act". The Applicant requested this court to;-  
  
"Investigate the matter and determine the issues involved."
2. The Reference was triggered by the notice of termination of tenancy dated 13.9.2023 and which was intended to take effect on the 1.12.2023. It was founded on the ground that;-  
  
"I want to sell the plot. I request the rent Tribunal court and OCS Mbale police station to order the Tenant to pay all the Rent arrears and vacate the business premises."
3. Further to the Reference, the Applicant Jane Nyagano Imbahale filed what she referred to as "Affidavit in protest to notice of Termination or alter terms of Tenancy." In it she offered that;
  - i. She rented the demised premises from the late Samuel Ogada the father to the Respondent in 1992 and has never fallen into any rent arrears.
  - ii. The shop on the demised premises was her only source of income as a widow and used the same income to cater for the needs of her grandchildren.



- iii. She had debtors who owed her approximately Kshs. 200,000/= and which was likely to be lost if she delivered vacant possession of the premises.
4. The Applicant also filed what she termed as “Further Replying Affidavit” sworn on the 2.1.2024. In it she asserted that;-
  - a. She had paid all her rents as they fell due thus meeting her cardinal obligations as a Tenant. She annexed mpesa statements to that effect marked “JN1-1”.
  - b. Her business was a multimillion business enterprise which needed time to be closed down as there were no available premises in Mbale town.
  - c. She needed time to clear her stocks, collect debts from her debtors and close down the shop.
  - d. There were other Tenants in the building where the demised premises were situated and they had not been issued with termination notices.
  - e. That the purported intention to sell the building aforesaid was merely a disguise to evict her.
  - f. The court to dismiss the termination notice with costs.
5. The Respondent in support of the termination notice dated 13.9.2023 and in response to the Reference dated 24.11.2023, he filed the Replying affidavit sworn on the 27.12.2023. It was his evidence that;-
  - i. The family had resolved to dispose off the building where the demised premises was situate due to high land rates and rents and the requirements by the Vihiga County Government to renovate the same.
  - ii. The costs related to the rents, rates and renovations were not within their means. He attached minutes by the family as “KO-1”.
  - iii. The termination was in strict compliance with the law.
  - iv. He had given the Tenant ample time within the notice to settle all her issues.
6. Over and above the pleadings, the Applicant and the Respondent rendered oral evidence in court. What came out from the testimonies was that;-
  - i. The Tenant was compliant in terms of rent payment.
  - ii. The Respondent urgently needed to dispose of the property to meet obligations of both the family and County Government of Vihiga.
  - iii. Ten previous Tenants had vacated 10 rooms under the guise that the property was for sale but a new Tenant was installed in the rooms.
  - iv. There were other Tenants in the premises and who had not been issued with termination notices.
7. From the pleadings and oral evidence by the parties, in my view, the issues for determination in this matter are the following;-
  - A: Whether the notice of Termination of Tenancy dated 13.9.2023 is merited.
  - B: Whether the Reference dated 24.11.2023 is merited.
  - C: Who should bear the costs of the Reference.



8. On the first issue of whether the notice of termination of tenancy dated 13.9.2023 is merited, I would at the outset confirm that same is compliant with Sections 4(2) and 4(4) of the Act and Regulation 4(1) of the Regulations to the Act in terms of form.
9. The only issue is whether the same can be said of the grounds in support of the notice of termination. In the notice, the Respondent had asked that the Tenant be ordered by this Tribunal and the OCS Mbale police station to pay all rent in arrears before she delivered possession of the premises.
10. The Respondent never indicated the amount owed to him by the Applicant in rent arrears and for which months if at all. Indeed, he never addressed the purported rent arrears when he testified in court. On the other hand, the Applicant demonstrated by producing mpesa statements that she faithfully met her obligations by timely payment of rent.
11. Section 7(1)(b) provides non-payment of rent as a ground for termination of a tenancy and provides thus;-

“That the Tenant has defaulted in paying rent for a period of two (2) months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable.”
12. In the instant case, there is no iota of evidence that the Tenant was in any rent arrears at the time the termination notice was issued or when the parties testified in court. Therefore, that ground cannot hold and is dismissed.
13. The 2<sup>nd</sup> ground that supported the termination notice was that the Respondent wanted to sell the plot. That particular ground is not known to the law. The law envisages that a property can change hands with the tenancies thereon remaining in force.
14. Section 7(2) of the Act provides that;-

“The landlord shall not be entitled to oppose a Reference to a Tribunal on the ground specified in subsection 1(g) of this Section if the interest of the landlord, or an interest which has merged in that interest and but for the merger would be the interest of the landlord, was purchased or created within the five-year period preceding the date of the tenancy notice seeking to terminate the tenancy, and at all times since such purchase or creation the premises concerned have been occupied wholly or mainly for the purposes of a “shop, hotel or catering establishment.”
15. From the foregoing, this ground for termination of the tenancy is also misguided and I proceed to also dismiss the same. In all, the Termination Notice dated 13.9.2023 is declared illegal and without any force of law nor effect.

**Issue No. B: Whether the Applicant’s Reference dated 24.11.2023 is merited**

16. The Applicant sought the intervention of this court to investigate the termination notice and determine the issues involved. The court has after thorough scrutiny of the pleadings and testimonies of the parties made a determination that the said termination notice was illegal. It therefore follows that the Reference dated 24.11.2023 is found to have merit and is upheld.



**Issue No. C: Who should bear the costs of this suit**

17. The proviso to Section 27 of the [Civil Procedure Act](#) provides that;-

“Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or Judge shall for good reason otherwise order.”

I do not find any good reason or cause to divert from the wisdom of this proviso. I therefore award costs to the Applicant.

18. In conclusion, the orders that endear to me are the following;-

- i. That the termination notice dated 13.9.2023 is declared illegal and of no legal effect.
- ii. That the Reference dated 24.11.2024 is upheld in terms that the Applicant shall enjoy quiet possession of the demised premises.
- iii. That the Applicant is awarded costs assessed at Kshs. 20,000/= to be offset from rent payable to the Respondent.

Those are the orders of the court.

Judgment dated, signed and delivered virtually at Nairobi this 28<sup>th</sup> day of March, 2024.

**HON. NDEGWA WAHOME, MBS**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of the Applicant and in the absence of the Respondent

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