



REPUBLIC OF KENYA

BUSINESS PREMISES RENT TRIBUNAL

VIEW PARK TOWERS 7TH & 8TH FLOOR

TRIBUNAL CASE NO. E240 OF 2021 (NAIROBI)

PAUL NG'ANG'A NJUGUNA.....1ST APPLICANT/TENANT

STEPHEN NJOROGE.....2ND APPLICANT/TENANT

VERSUS

PATRICK KARANJA.....1ST RESPONDENT/LANDLORD

J. KAMOTHO.....2ND RESPONDENT/LANDLORD

J. KIIRU.....3RD RESPONDENT/LANDLORD

VERONICAH WAMBUI.....4TH RESPONDENT/LANDLORD

RULING

1. The Tenants moved this Tribunal through a motion dated 25th June 2021 seeking for restraining orders against the Respondents from evicting or in any other manner interfering with their quiet occupation and lawful enjoyment of the suit premises pending hearing and determination of the case.
2. The application is supported by the affidavit of 1st Applicant sworn on even date and the grounds set out on the face thereof. The suit premises are situate at Kahawa West and the tenants took possession thereof on 25th August 2013 at a monthly rent of Kshs.15,000/-.
3. The tenants admit being in arrears of Kshs.21,000/- as at the date of filing the application. A written agreement was entered into between the 1st Applicant and the 1st to 3rd Respondents on 25th August 2013.
4. On 20th May 2021, the 1st Respondent issued the tenants with a 30 days notice to vacate the suit premises. The tenants contend that the said notice is incurably defective and is marked annexure PNN2.
5. It is the tenant's case that they are threatened with eviction despite having spent Kshs.250,000/- to renovate the suit premises and Kshs.135,000/- for electricity installation.
6. The tenants depose that they are being subjected to emotional, psychological suffering for being depicted as truant tenants and ordinary crooks through the illegal notice to vacate.
7. Through a replying affidavit of the 4th Respondent sworn on 5th August 2021, the said application is opposed. According to the Respondents, the tenants have defaulted to pay rent since June 2021 and as at the date of swearing the replying affidavit had accumulated arrears of Kshs.45,000/- which they have failed to pay since obtaining ex-parte orders.
8. As a result, the 4th Respondent was undergoing loss while the tenants continued in possession of the premises without paying rent.
9. Any renovations effected on the suit premises by the tenants was without the 4th Respondent's consent neither was the County Government's approval obtained.
10. The 4th Respondent confirms serving the tenants with termination notice on account of default in paying rent. As such the tenants are not

entitled to the orders sought.

11. I have also looked at the reference dated 25th June 2021 and the same challenges the notice issued by the landlords for being defective. I shall therefore deal with the reference together with the application.

12. The matter was ordered to be disposed of by way of written submissions but only the Respondents complied.

13. I am required to determine the following issues:-

(a) Whether the tenants are entitled to the orders sought.

(b) Whether the notice served upon the tenants is valid.

(c) Who is liable to pay costs?

14. There is no dispute that the tenants are in arrears of rent and have not made any proposal on how they intended to settle the same. It is trite law that whoever comes to equity must come with clean hands.

15. A tenant who is in breach of his cardinal obligation to pay rent cannot be entitled to an order of injunction. This was the holding in the case of Samuel Kipkori Ngeno and Another – vs- Local Authorities Pension Trust (Registered Trustees) & Another (2013) eKLR wherein Justice HPG Waweru had the following to say on the issue:-

“9. A tenant’s first and main obligation is to pay rent as and when it becomes due for the landlord has the right to an income from his investment. Why would a tenant allow himself to fall into such huge arrears of rent.

“12. The temporary injunction sought in the present application is an equitable remedy at the court’s discretion. He who comes to equity must come with clean hands. A tenant who is in huge arrears of rent is underserving of the court’s discretion. The court cannot be the refuge of a tenant who fails to meet his principal obligation of paying rent as and when it becomes due”.

16. In the premises, I find and hold that the tenants herein have failed to bring themselves within the principles of injunction espoused in the Locus Classicus Case of Giella – vs- Cassman Brown & Co. Ltd (1973) E.A 358.

17. As to whether the notice served upon the tenants is valid, I wish to consider the provisions of section 4(2) of Cap. 301, Laws of Kenya which provides 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”.

18. The notice marked ‘PNN2’ is not in the prescribed form and is thus of no effect. It is null and void for all purposes and is a candidate for dismissal.

19. In the premises, the final orders that commend to me are the following:-

(a) The tenant’s application dated 25/6/2021 is hereby dismissed.

(b) The tenant’s reference dated 25/6/2021 is hereby allowed and the tenancy notice dismissed.

(c) The landlord is however at liberty to issue a proper notice and to use lawful means to recover outstanding rent against the tenants.

(d) Each party shall bear own costs of the case.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF DECEMBER 2021.

HON. GAKUHI CHEGE

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

IN THE PRESENCE OF:-

1ST APPLICANT/TENANT

OUMA HOLDING BRIEF FOR KEGODE FOR LANDLORD