



REPUBLIC OF KENYA

BUSINESS PREMISES RENT TRIBUNAL

VIEW PARK TOWERS 7TH & 8TH FLOOR

TRIBUNAL CASE NO. E025 OF 2021 (ELDORET)

STEPHEN NJUGUNA

T/A Q. SMART HARDWARE.....APPLICANT/TENANT

VERSUS

TITUS GATITU NJAU

T/A TITO HOUSE.....LANDLORD/RESPONDENT

RULING

1. By a motion dated 4th October 2021, the tenant applied that there be a temporary stay of execution and/or taking effect of the landlord's notice to terminate tenancy dated 1/9/2021 from 1/11/2021 pending hearing of the reference.
2. The application is supported by the tenant's affidavit of even date and the grounds set out on the face of the application.
3. On 1st September 2021, the landlord served a tenancy notice upon the tenant seeking to terminate his tenancy in respect of Tito House with effect from 1st November 2021 in order that he occupies the premises upon improvement. He states in the notice that the tenant has been altering the structure without his permission.
4. According to the application the tenant was willing to vacate the premises but required more time to do so as he was servicing 4 different bank loans in the tune of Kshs.10,064,679/- with Equity bank.
5. The tenant is paying Kshs.20,000/- monthly rent and that he stood to suffer great prejudice if the running of his business was disrupted as it will negatively affect his ability to repay his loan.
6. The tenant has been in the premises for the last 25 years running a hardware business. He admits being served with termination notice and his attempt to reach out to the landlord was futile. He is seeking for sufficient time to get alternative and appropriate premises for his business.
7. He states that if granted time, it will avoid hurting his credit standing with his banker and ensure continued business operation. He thus needs time to put his business in order. No prejudice will be suffered by the landlord in the event of extension being granted.
8. The landlord states that the period given in his notice accords with the time provided under Cap. 301, Laws of Kenya and the reasons are well documented.
9. It is admitted by the landlord that there were correspondences exchanged between the parties' advocates which he attaches as annexures TGN 1(a), (b) and (c).
10. According to the landlord, no concrete reason has been advanced by the tenant to warrant extension of time specified in the notice of termination of tenancy. Such extension according to the landlord cannot be indefinite and the fact that the tenant was servicing a loan does not override his right to acquire vacant possession of the premises.
11. As such the landlord contends that the application and reference dated 4th October 2021 is not merited and ought to be dismissed with costs.

12. The tenant filed a further affidavit sworn on 28th October 2021 joining issues with the landlord and clarifying that he needed 2 years to vacate the premises as he will have greatly reduced the huge loans owing to his bankers.

13. The tenant deposes that the business community was slowly emerging from the hard economic times brought about by Covid-19 pandemic.

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

(a) Whether to uphold or dismiss the tenancy notice dated 1st September 2021.

(b) Whether the tenant is entitled to extension of time should the tenancy notice be upheld.

(c) Who is liable to pay costs 2.

15. I note that the application and the reference raise the same issues and I shall determine both together. I also note that only the Landlord and I shall determine both together. I also note that only the landlord filed submissions in line with directions given on 2/11/2021.

16. It is clear from the pleadings filed herein that the tenancy notice is not contested by the tenant. The tenant only seeks for extension of the period given therein for reasons that he had loans totaling to over Kshs.10,064,679/- as at the time of swearing his affidavit.

17. The tenant further states that he requires two (2) years to reduce his indebtedness to his bankers and look for alternative premises. He fears that an order for immediate delivery of vacant possession will seriously prejudice his credit rating should his loan repayment ability be affected. No prejudice would be suffered by the landlord if the extension was granted according to the tenant.

18. The landlord on the other had states that his notice period accords with Cap. 301, Laws of Kenya and seeks for dismissal of the application and reference.

19. Section 9(1) (a) of Cap. 301 provides as follows:-

“Upon a reference, a Tribunal may, after such inquiry as may be required by or under this Act or as it deems necessary”.

(a) Approve the terms of the tenancy notice concerned, either in its entirety or subject to such amendment or alteration as the Tribunal thinks just having regard to all the circumstances of the case.....”

20. This provision gives wide discretion to the Tribunal to determine the effective date of a tenancy notice in such a manner that it deems fit having regard to the fact that any such discretion is to be exercised judicially.

21. I have looked at the bank statements annexed to the supporting affidavit and I entirely agree with the tenant that requiring him to move out of the business premises which he has occupied for over 25 years immediately in the back drop of his huge indebtedness amounts to killing the business and shall no doubt affect his loan repayment schedule. I also agree with him that given the effects of Covid-19 pandemic and the fact that most businesses are now undergoing recovery, it would be unjust to require him to vacate the premises immediately.

22. The landlord in his submissions states that he needs the premises for purposes of improvement and that the two months given under the Act is sufficient. There was no difficulty in moving the business hardware materials within 7 days according to the landlord.

23. The landlord prays that the tenant be allowed up to 31st January 2022 to move out and give vacant possession of the suit premises.

24. As the nature of the improvements and the kind of use the landlord intends to put the premises into has not been disclosed, I consider that a period of six (6) months would not in any way prejudice the landlord. This is more so given that the tenant continues to pay monthly rent as and when the same falls due and payable.

25. In the premises, the following final orders commend to me:-

(a) The tenancy notice dated 1st September 2021 is hereby upheld subject to the effective date being amended to 1st July 2022.

(b) The tenant shall give vacant possession on or be evicted therefrom by a licenced auctioneer who shall be provided with security by the OCS within whose area of jurisdiction the premises are located.

(c) Each party shall meet own costs of the case in view of order (a) and (b) above.

(d) This ruling shall also apply to Eldoret BPRT NO. E024/2021 between Eunice Njeri T/A Generation Shop – vs- Titus Gatitu Njau T/A Tito House.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF DECEMBER 2021.

HON. GAKUHI CHEGE

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

In the presence of:

Mr. chanzu for the Landlord/Respondent

Mr. Matekwa for the Tenant