



REPUBLIC OF KENYA

BUSINESS PREMISES RENT TRIBUNAL

VIEW PARK TOWERS 7TH & 8TH FLOOR

TRIBUNAL CASE NO. 61 OF 2021 (NAIROBI)

SOLOMON NGUI MUTUA

MONICA MUTUA MULINGE

PAUL MULINGE MUTUA

KEVIN SOO MUTUA (Suing as the legal representatives of the Estate of

FREDRICK MUTUA (now deceased) T/A

MAKUENI UNIFORMS.....TENANT/APPLICANTS

VERSUS

BEATRICE WAYUA MUTEVU.....LANDLORD/RESPONDENT

RULING

The Tenants/Applicants have by their notice of motion application dated 19/1/2021 sought the following orders:

1-Spent

2. That the Applicant/Tenant does continue having possession of the premises and the Respondent be restricted from harassing the Applicants/Tenants and/or in any other way manner interfering with his Tenancy pending the hearing of the Application interpartes.

3. That the Applicant/Tenant does continue having possession of the premises and the Respondent be restricted from harassing the Applicants/Tenants and/or in any other manner interfering with his tenancy.

4. Costs

5. O.C.S Makeni Police Station to ensure compliance.

The grounds upon which the Application is based may be summarized on follows:

1. That the Landlord has issued to the Tenant a seven day notice to vacate the suit premises.

2. That the Tenant has complied with all terms of the Tenancy and has paid rent up to March, 2021 which was received by the Landlord.

3. That the Applicant stands to suffer irreparably if these orders are not granted.

The application is purported by the affidavit of SOLOMON NGUI MUTUA sworn on 11/1/2021 and his further affidavit sworn on 9/4/2021.

The Tenants case as stated in their affidavits may be summarized as follows:

1. That the deponent is one of the administrators of the Estate of the deceased Fredrick Mutua Mulinge.
2. That on 17/1/2021, the Applicants received a notice to vacate the demised premises within seven days.
3. That the Tenants do not owe the Landlord any rent arrears.
4. That the Landlord/Respondent has been receiving rent from the Tenants for the preceding one year with no issues of locus standi raised.
5. That the actions of the Landlord in attempting to evict a “deceased” tenant are in contravention of section 47 of the Law of Succession Act.
6. That the Applicants have a pending succession cause No. 23 of 2020.
7. That the notice to vacate addressed to one MONICA MUTUA MULINGE was never served upon her.
8. That no other Tenants in the same premises owned by the Respondent have been issued with notice of renovation or eviction.
9. That the acts of the Respondents are fueled by malice and an intention to take over the business of the Tenants/Applicants.
10. That the Tenants/Applicants have never complained of any defects in their business premises to warrant any renovations.
11. That it is not clear whether the family of the Respondent wants to demolish or renovate the demised premises.

The Landlord’s case as stated in her Replying Affidavit may be summarised as follows:

1. That she is the legal Representative of the Estate of the deceased PAUL MUTEVU KIMATU (a grant of letters of administration intestate is exhibited as BNM-1.
2. That the Applicants have not established the Locus standi upon which they are bringing this Application for lack of letters of administration of the deceased Tenant’s Estate.
3. That the Applicant’s were served with a three months notice to vacate through their manager JONATHAN KAVINYA on 15/9/2020.
4. That the notice received by the Applicants on 13/1/2021 was only a reminder.
5. That the Tenants were well aware of the notice to vacate issued on 15/9/2020 even as they paid their rent for January 2021 to March, 2021.
6. That the Respondent and his family have resolved to have the demised premises renovated to reflect the current status of WOTE TOWN.
7. That the Applicant’s have never sought the indulgence of the Landlord in arriving at an amicable resolution of this matter.

Both parties were ordered to file submissions and I proceed to summarise their submissions as follows:

THE TENANT’S SUBMISSIONS:

1. That there was no notice to vacate as required by law.
2. That the purported notices by the Landlord do not comply with section 4(5) of Cap 301.
3. That the reasons for termination are not specific.
4. That the letter dated 15/9/2020 is addressed to Monica Mutua and not to the Tenant Fredrick Mutua.
5. That non compliance with section 4 of Cap 301 deprives the Landlord of any rights to assert under the Law.
6. That the Law does not allow the Landlord to take forceful possession of the demised premises.
7. That it is Trite Law that unless a Tenant consents or agrees to give up possession, the Landlord has to obtain all orders from a competent court or statutory Tribunal to obtain an order for possession. The Tenants in the instant case have not consented to give up possession.

8. The Landlord/Respondent continues to receive rent even after the expiry of the impugned notice dated 15/9/2020.
9. That the Tenant's have already filed succession cause No. 23 of 2020 in Mombasa.
10. That if the parties moving the Tribunal have no Locus Standi, then the attempt to terminate the Tenancy is unlawful as there was no party available to the Landlord to move against under the law.
11. That the applicants stand to suffer irreparable damages if the orders sought are not granted.

The Landlord's/Respondents submissions may be summarized as follows:

1. That it is not in dispute that the Applicant's and the Respondents have had a Tenancy relationship.
2. That the said Tenancy is a controlled Tenancy and the Respondent is now desirous of terminating the same.
3. That in order to terminate a controlled Tenancy, the Landlord is bound to comply with section 4 (1) (2)(3) (4) (5) and (6) of Cap 301.
4. That the Respondent issued the requisite notice vide her letter of 15/9/2020 and the said notice was specific on the grounds for termination.
5. That the letter dated 15/9/2020 and the minutes of the family meeting held on 18/7/2020 gave the Landlords clear intention to renovate the suit premises.
6. That the Tenant's have not complied with section 4(5) of Cap 301 in so far as they failed to notify the Respondent whether or not they agreed to comply with the notice.
7. That the Tenant's/Applicant's having failed to Lodge a reference with the Tribunal within the Notice period the controlled Tenancy herein came to an end on 20/12/2020.
8. That the letter dated 13/1/2021 was a reminder to the Applicant's to vacate the business premises and not an eviction notice as presented in the Application.

The issues that arise for determination in my humble view are the following:

1. Whether there exists a Tenancy relationship between the parties herein and whether the said Tenancy is a controlled Tenancy?
2. Whether there exists a valid Notice by the Landlord to terminate the Tenancy herein in compliance with section 4 of Cap 301.
3. Whether the Tenancy between the parties herein came to an end on 20/12/2020.
4. Whether the Tenants/Applicants are entitled to the orders they have sought under the Application dated 19/1/2021.

ON ISSUE NO. 1

The landlord has admitted in her introductory remarks in her submissions that it is not in dispute that a Tenancy relationship existed between the parties. The landlord has further admitted that the said Tenancy is a controlled Tenancy. As far as the material placed before me goes, the said agreement has not been reduced into writing. I am therefore satisfied and I do find that the Tenancy between the parties herein is a controlled Tenancy.

ON ISSUE NO. 2

The Tenants/Applicants at paragraph 3 of SOLOMON NGUI MUTUA'S supporting Affidavit state that on 17/1/2021 they received a notice to vacate the premises that house their father's business in Wote Township within the next seven days. Though the notice has not been exhibited on the said affidavit, I notice it is the one dated 13/1/2021 exhibited as BMM-3 in the Respondents Replying Affidavit sworn on 10/4/2021. The said letter is titled.

“REMINDER TO VACATE BUSINESS PREMISES SITUATE IN WOTE TOWNSHIP NEAR POST BANK-CHRISTENED MAKUENI UNIFORMS

The said letter sought to remind the recipient/addressee that she ought to have vacated the demised premises by 20/12/2020 pursuant to a notice to vacate dated 15/9/2020. The reminder gave the Tenant seven (7) days to vacate failing which she would be evicted.

I have also seen the letter dated 15/9/2020 addressed to MS. MONICA WAYUA KANYASA. The letter is written by MS. MWANGANGI & ASSOCIATES Advocates on behalf of MS BEATRICE WAYUA MUTEVU, The Respondent/Landlord. The same is titled “NOTICE TO VACATE”.

It is the one the Respondent holds to be the proper notice to vacate/Terminate the Tenancy issued by the Respondent to the Tenant. The said letter acknowledges that the Tenant has been paying rent religiously but seeks to terminate the Tenancy for the reasons that the Landlord wishes to put up a storied building as from 20/12/2020. The said development cannot take place while the tenant is still in the premises. The notice given by the said letter is for a period of three months:

The question then would be whether both letters constitute the Notice of termination of Tenancy contemplated under section 4 of Cap 301.

Section 4(2) Cap 301 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 (underlining mine).

Under section 4(5) of the said Act,

“A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination or re-assessment concerned and requires the receiving party to notify the requesting party in writing, within one month after the date of receipt of the notice, whether or not he agrees to comply with the notice (underlining mine).

The prescribed form referred to under section 4(2) of cap 301 is FORM A1 in the schedule. I do find that the Landlord's letter dated 15/9/2020 does not amount to the prescribed form of Notice provided for under section 4(2) of Cap 301. I further find that the said Notice/Letter goes afoul of the provisions of Section 4(5) of Cap 301 to the extent that it does not require of the tenant to notify the landlord whether or not he intends to comply with the demand in the notice within one month of the receipt of the said notice. In answer to this issue. I therefore do find that no valid notice to terminate the Tenancy has been issued by the Landlord to the Tenant/Applicant. Following on this the issue No. 3 as raised by myself is answered in the negative.

ON ISSUE NO. 4

The Landlord has already admitted the existence of the controlled Tenancy between the parties herein. I have also found the notice purportedly issued to the Applicant/Tenants was issued contrary to the express provisions of section 4 of cap 301.

The Landlord has also confirmed that the Tenant has been paying rent religiously. Indeed the Tenant has stated that rent is paid up to March 2021.

The Landlord had raised the issue of Locus Standi on the part of the Tenants. The contention being that the Tenants have not taken out any letters of administration for the Estate of the deceased Fredrick Mutua Mulinge.

The Landlord seems to have abandoned this argument as nothing is mentioned of it in her submissions. I however do note that the notice under challenge was not issued to the deceased Fredrick Mutua Mulinge but to one MONICA WAYUA KANYASYA whom I will presume to be the 2nd Applicant/Tenant in these proceedings. The Landlord having admitted to the existence of the Tenancy between the parties to the dispute herein and having further admitted to continuing receiving rent from the Tenant herein, I am of the opinion that the Tenants herein are the proper parties to the dispute herein.

For the above reasons, I do allow the Tenants Application dated 19/1/2021 in terms of prayer 3 and 4 of the said application.

HON. CYPRIAN MUGAMBI NGUTHARI

CHAIRMAN

BUSINESS PREMISES RENT TRIBUNAL

10/5/2021

Ruling read and delivered this **18TH** day of **MAY 2021**.

HON. CYPRIAN MUGAMBI NGUTHARI

CHAIRMAN

BUSINESS PREMISES RENT TRIBUNAL

18/5/2021

In the presence of:

Charana for the Tenant/applicant

No appearance for the Landlord/Respondent