



**REPUBLIC OF KENYA**

**BUSINESS PREMISES RENT TRIBUNAL**

**VIEW PARK TOWERS 7<sup>TH</sup> & 8<sup>TH</sup> FLOOR**

**TRIBUNAL CASE NO. 346 OF 2021 (NAIROBI)**

**MARYANN NYAGUTHII MATHENGE.....TENANT/APPLICANT**

**VERSUS**

**KASSIM MOHAMED BARRE.....1<sup>ST</sup> RESPONDENT/LANDLORD**

**ISAAC GACHURURI.....2<sup>ND</sup> RESPONDENT/LANDLORD**

**RULING**

1. Through a motion dated 2<sup>nd</sup> September 2021, the tenant is seeking to be allowed to deposit rent in the Tribunal upon the Respondents' default to accept the same.
2. She further seeks for restraining orders against the Respondents from interfering with her quiet occupation and lawful enjoyment of the suit premises situate along Eastleigh Gatina Road pending hearing of the complaint.
3. The application is supported by the tenant's affidavit of even date and the grounds on the face of the application.
4. The tenant entered into a tenancy agreement with the 1<sup>st</sup> respondent in respect of the suit premises for a period of 7 months from 1<sup>st</sup> June 2021 to 31<sup>st</sup> December 2021 subject to renewal by the landlord. The agreed rent is Kshs.15000/- payable on or before 7<sup>th</sup> of every month.
5. The tenant complains that she has been given verbal notice to vacate on the basis that the 2<sup>nd</sup> respondent purchased the suit premises. The notice was to take effect on 15<sup>th</sup> September 2021 according to the tenant.
6. The 1<sup>st</sup> Respondent swore a replying affidavit on 12<sup>th</sup> October 2021 stating that the suit premises was a dwelling house and not a business premises.
7. The tenant was to erect a kiosk for business purpose on the front part of the dwelling house. Instead, the tenant is alleged to have demolished the front part of the residential house and created a door leading to damage of Kshs.25,000/- which she should be compelled to pay.
8. On 25<sup>th</sup> June 2021, the landlord issued a legal termination notice from this Tribunal requiring the tenant to vacate by 1<sup>st</sup> September 2021 since the landlord had sold the house to the 2<sup>nd</sup> Respondent.
9. A second reminder was issued upon the tenant to vacate by 1<sup>st</sup> September 2021 whereupon she rushed to this Tribunal.
10. The 1<sup>st</sup> Respondent deposes that the 2<sup>nd</sup> Respondent intends to demolish the house and start construction immediately but the tenant has refused to vacate therefrom.
11. The Tenant have also utilized her rent deposit of Kshs.15,000/- and is required to vacate from the suit premises in terms of clause 6 of the tenancy agreement.
12. According to the 1<sup>st</sup> Respondent, the tenant came to this honourable court with unclean hands without disclosing that she has been occupying a dwelling house which she converted into a business premises without his express consent.

13. The tenant is said to have been in arrears of 3 months (Kshs.45000/- as at 12<sup>th</sup> October 2021 and was further required to compensate the landlord with Kshs.25,000/- for damage caused to the dwelling house.

14. The tenant's complaints under the application are similar with those in the reference and I intend to deal with both together.

115. The issues for determination are:-

a. Whether the suit premises is residential or business premises.

b. Whether the tenant is entitled to the orders sought herein.

c. Who is liable to pay costs?

16. I have looked at the lease agreement annexed to the supporting and replying affidavits and the same does not disclose the user of the premises. On the other hand, the landlord at paragraph 9 of his replying affidavit admits that the tenant converted the dwelling house into a business premises.

17. It is therefore clear from the replying affidavit that the suit premises is for all intents and purposes a business premises.

18. The agreement further states that the tenant was to occupy the premises up to 31<sup>st</sup> December 2021. On 25<sup>th</sup> June 2021, the landlord issued a notice of termination of tenancy by 1<sup>st</sup> September 2021 stating that he had sold the premises and the buyer wanted vacant possession by the said date.

19. On 14<sup>th</sup> October 2021, the parties appeared before the area Chief, Pangani Location and agreed that the tenant shall continue to occupy the suit premises until 31<sup>st</sup> December 2021. She was to pay Kshs.45,000/- being rent in arrears by 20<sup>th</sup> October 2021.

20. It is therefore clear that the Landlord's notice was withdrawn by consent of the respondents so as to give the tenant more time to vacate by 31<sup>st</sup> December 2021.

21. There is no evidence before me to show that the tenant paid rent for October, November and December 2021 save for Kshs.30,000/- to cater for the of August and September so as to warrant entitlement to the equitable remedy of an injunction.

22. There is equally no evidence tendered to show that the tenant paid any rent to the 1<sup>st</sup> Respondent and the same was rejected or returned to her to warrant an order for rent deposit with this Tribunal. I therefore reject the said prayer.

23. The duty of this Tribunal is to enforce contracts made by the parties and not to rewrite them. The landlord has already agreed to grant the tenant stay in the suit premises until 31<sup>st</sup> December 2021 in terms of the lease agreement. This must have been done in realization that sale of a property does not negate or terminate the rights of persons in actual occupation or those having overriding interests over landed property.

24. I have seen the supplementary affidavit of the tenant wherein she argues that the landlord was not entitled to issue a termination notice when there was an ongoing case before this Tribunal. However the notice was issued on 25<sup>th</sup> June 2021 long before the instant proceedings were instituted. It is thus not defective.

25. The other complaints set out in the supplementary affidavit of the tenant do not form part of the initial reference or application and cannot be subject matter of the instant determination.

26. The fact that the tenant predicates her application for more time on the basis of alleged loan which she is to pay until May 2022 is neither here nor there. She all along knew that her lease was coming to an end on 31<sup>st</sup> December 2021 when she applied for the loan.

27. In the premises, I shall proceed to make the following final orders:-

a. The tenant's application dated 2<sup>nd</sup> September 2021 and the reference of even date are hereby dismissed.

b. The tenant shall vacate the suit premises by 31<sup>st</sup> December 2021 in terms of the lease agreement failing which she shall be evicted by the landlord through a licensed auctioneer.

c. The OCS, Pangani Police Station shall ensure compliance with these orders.

d. The tenant shall pay any outstanding rent before vacating the premises failing which the landlord shall be at liberty to levy distress against her.

e. Each party shall bear own costs of the suit.

**It is so ordered.**

**RULING DATED, SIGNED AND DELIVERED THIS 8<sup>TH</sup> DAY OF DECEMBER 2021 VIRTUALLY**

**HON. GAKUHI CHEGE**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

**In the presence of:-**

Tenant present in person

No appearance for the Landlord/Respondents