



**Kiprono & 2 others v Rutto & 4 others (Tribunal Case E105 & E168 of 2022
(Consolidated)) [2023] KEBPRT 1374 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1374 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E105 & E168 OF 2022 (CONSOLIDATED)
CN MUGAMBI, CHAIR
JULY 26, 2023**

BETWEEN

**SUSAN KIPRONO 1ST APPLICANT
ISABELLA KIPRONO 2ND APPLICANT
CAROLINE KIPRONO 3RD APPLICANT**

AND

**MICHAEL RUTTO 1ST RESPONDENT
VITALIS HESBON JOSEPH 2ND RESPONDENT
GEOFFREY NJIHIA 3RD RESPONDENT
ISAAC KINUTHIA 4TH RESPONDENT
JUSTUS MUTINDA 5TH RESPONDENT**

RULING

1. The landlords Application dated 1.9.2022 seeks orders terminating the tenancy between the parties herein and thereafter orders of eviction to be issued against the Tenants/Respondents. The Application also seeks orders to levy distress for rent against the Tenants using a licensed auctioneer. Police assistance in the enforcement of the orders sought has also been sought by the Applicants/ landlords.
2. The Affidavit of Carolyn Kiprono in support of the Application may be summarized as follows:-
 - a. That the Applicants entered into a lease agreement with the Respondents who pay a monthly rent of Kshs. 20,000/=, Kshs. 3,000/=, Kshs. 30,000/=, Kshs. 20,000/=, Kshs. 20,000/= and Kshs. 25,000/= respectively.



- b. That the Tenants have defaulted in rent payment for a period of over five (5) months necessitating the landlords to issue the Tenants with notices of termination of their tenancies, the tenancy notices are the ones dated 17.5.2022.
- c. That the tenants were served with the notices to terminate their tenancy but have not responded to the same by filing any objection.
- d. That as at the time of filing this suit, the Tenants have rent arrears in the sum of Kss. 324,000/=, Kshs. 48,000/=, Kshs. 90,000/=, Kshs. 320,000/=, Kshs. 320,000/= and Kshs. 400,000/= respectively.

The Tenants depositions

- 3. The replying affidavit of Mary Jimm, the 5th Respondent may be summarized as follows;-
 - a. That the Respondents have been in the suit premises for more than ten (10) years.
 - b. That the Respondents came to know of this suit from a friend and as such instructed Mr. Simiyu Advocate to act for them in this matter.
 - c. That the Respondents were never served with the notices to terminate their tenancies.
 - d. That the Tenants have been paying their rent faithfully and have at no time defaulted in the payment of the same.
 - e. That the suit property does not belong to the Applicants as it belongs to the Kenya Industrial Estates.

The Landlords Further Affidavit

- 4. The Landlords further affidavit sworn by Susan Kiprono may be summarized as follows;-
 - a. That the Tenants were served with notices to terminate tenancy dated 17.5.2022 in the prescribed form and which notices were to take effect on 1.8.2022.

Analysis an determination

- 5. The only issue that arises for determination is whether the Applicants are entitled to the orders sought in their Application.
- 6. The Tenants challenge the Landlords Application majorly on the grounds that they have never been served with the notices to terminate their tenancies and further that the suit premises do not belong to the Applicants but do belong to Kenya Industrial Estates.
- 7. Were the Tenants served with the notices to terminate their tenancies? In the affidavit of service sworn and filed by Mr. Ronald Njuguna, it is deponed as follows;-
 - 2: That on 21st May 2022, I received landlords notice to terminate or alter terms of tenancy from the landlords of plot known as No. 4/273 Shabab, Nakuru with instructions to serve the following tenants: Michael Ruto, Vitalis Hesbon, & Joseph, John Mwangi Karanja, Geoffrey Njihia, Isaac Kinuthia, Mary Jimm and Justus Mutinda.
 - 3: That on the same day, I proceeded to the said premises and upon my arrival, I found all the above tenants and served them with the said notice.



4: That the said tenants accepted my service by retaining their copies and acknowledged same by signing at (sic) the face of my copies but only one Mary Jimm declined to sign at (sic) my copy. Hence I herewith return the notice duly served.

8. At paragraph 2 of the Affidavit of service, the process server depones that the Respondents were known to him since he had served them on several occasions. The process server has also deponed that the Respondents were known to him at the time of service. I have perused the notices of termination and I notice that the same have been signed as received on 21.5.2022 and 24.5.2022. This signing coupled with the process server's affidavit of service is proof enough that the Respondents were indeed served with the notices to terminate their tenancies, and I do find as such.

9. The Respondents on the one hand depone that the Applicants do not own the business premises and on the other hand, they depone that they have paid their rent in full and do not owe any rent arrears. The deposition that the premises belong to the Kenya Industrial Estates is not supported by any evidence and in my view, it is only diversionary.

I am not therefore convinced that the suit premises belongs to Kenya Industrial Estates as the Respondents have not even shown a single payment of rent to the said Kenya Industrial Estates.

10. The Tenants are required under Section 6 of Cap 301, to file a reference to the Tribunal if they are minded to oppose the notices of termination served upon them by the Applicants. This the tenants failed to do as a consequence of which the notices to terminate tenancy became effective on the dates indicated therein and as per the provisions of Section 10 of Cap 301. The upshot of this is that, the tenancy between the parties herein effectively terminated on 1.8.2022 and beyond that date, the tenants became no more than trespassers upon the suit premises.

11. Whereas the Tenants have deponed in their replying affidavit that they do not owe any rent arrears, they have not exhibited any material to support the rent payments alleged. Consequently, I find that the landlords claim to the unpaid rent in respect of each of the Tenants has been proved on a balance of probabilities.

Disposition

12. In the circumstances, I allow the landlords Application dated 1.9.2022 and order that;-

- a. The tenancy between the parties herein is ordered terminated with effect from 1.8.2022.
- b. The Tenants will render vacant possession of the suit premises within the next thirty (30) days FAILING which the Applicants will be at liberty to evict the Tenants forcefully.
- c. The Applicants are granted leave to levy distress for rent against the Respondents for the recovery of the outstanding rent arrears.
- d. The Respondents will have the costs of this suit assessed at Kshs. 50,000/=.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF JULY, 2023.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Kamau for the Applicants

In the absence of the Respondents

