



**Njeru v Karingithi (Tribunal Case E687 of 2022)  
[2023] KEBPRT 229 (KLR) (12 April 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 229 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E687 OF 2022  
A MUMA, VICE CHAIR  
APRIL 12, 2023**

**BETWEEN**  
**LAWRENCE MURITHI NJERU ..... APPLICANT**  
**AND**  
**LUCY NJERI KARINGITHI ..... RESPONDENT**

**RULING**

**A. Parties & their Representatives**

1. The Applicant herein entered into tenancy agreement with the Respondent on 7<sup>th</sup> day August 2020, over land Reference Number DAG/Riruta/2748 herein after “the Suit property”.
2. The firm of Anyango & Co. Advocates represents the Applicant/Tenant herein (winnieagunda@yahoo.com).
3. The Respondent is the registered proprietor and Landlord of the suit property.
4. The firm of C. Kimathi & Company Advocates represents the Landlord (candmkimathi@yahoo.com).

**DIVISION - B. Background of the Dispute**

5. The import of the instant dispute is the Notice by the Landlord to the Tenant on 23<sup>rd</sup> June, 2022. In the said Notice the Landlord expressed to the Tenant of his intention to terminate their tenancy agreement upon its expiry.
6. In response, the Tenant through his advocates on record wrote a letter dated 1<sup>st</sup> July 2022 objecting the intended notice.
7. Subsequently, on 25<sup>th</sup> November, 2022, the tenant moved this honourable Court vide a Notice of Motion dated 25<sup>th</sup> November, 2022.



8. He sought inter alia the following Orders:

- a. That an Order does issue that the Landlord's Notice to terminate or alter terms of tenancy issued to the tenant and dated 5<sup>th</sup> July, 2022 is invalid, illegal and or void;
- b. That this honourable Tribunal does vacate the Landlord's Notice to terminate or alter terms of tenancy dated 5<sup>th</sup> July, 2022;
- c. That this honourable Court does declares that there were no grounds for the increase in rent by the Landlord from KShs. 15,000.00 to KShs. 17,000.00; and
- d. That costs be borne by the Landlord.

#### **C. Applicant's Case**

9. The Applicant contends that he the rightful and legal tenant in the suit premises.
10. It is his case that the tenancy commenced on 7<sup>th</sup> May 2019, with a monthly rental payment of KShs. 15,000.00 that the same was payable on 5<sup>th</sup> day of every month.
11. That upon the expiry of the initial tenancy agreement, the parties renewed the tenancy by signing a tenancy agreement dated 7<sup>th</sup> August, 2020 and commencing on the 1<sup>st</sup> August 2020.
12. He deponed that, despite several reminders to the Landlord, the landlord has since been reluctant to make good the reminders. That as a result, the tenant committed to do the repairs at his own expenses.
13. He deponed that the decision by the Landlord to evict him from the suit premises is prejudicial and that it would occasion substantial financial loss to him.
14. Further, that the impugned notice by the Landlord to the tenant was merely a retaliation for request by the Tenant to the Landlord seeking repair of the suit property.

#### **D. 1st Respondents Case**

15. The landlady filled a Replying Affidavit dated 10<sup>th</sup> January 2023. It is the Landlady's case that she is the rightful owner of the suit premises.
16. She deponed that she wrote a letter to the Tenant dated 12<sup>th</sup> June 2020, in which she particularized reasons for her reluctance to renew the contract. That it was majorly as a result of previous breach of the contract by the tenant.
17. In response to the allegations by the tenant on the request for repair of the suit premises, it was her case that the same would fundamentally change the structure of the premises, as such, the reason for her reluctance.
18. She further averred that her relationship with the tenant is toxic which for all intents and purposes is untenable, thus, this Tribunal should be pleased to grant her Orders of vacant possession.

#### **E. Tenant's Submissions**

19. The Tenant filled written submissions dated 23<sup>rd</sup> January 2023. He submitted on four issues: whether the landlord notice to terminate tenancy dated 5<sup>th</sup> July 2022 is invalid, illegal and or void; whether the



Landlord's intention to increase rent from KShs. 15,000.00 to KShs. 17,000.00 is lawful; whether the landlord is in breach of her legal obligations to the tenant; and who will bear the costs.

20. While submitting on the first issue, the Landlord relied on section 4 of the Act (CAP 301), which provides for the notice by the Landlord. It was his submission that a proper notice as per the said section must comply with the prescribed form (it must disclose the grounds) and that, it shall only take effect after the expiry of 2 months.
21. On the second issue, the tenant relied on section 9 of the Act, (CAP 301) submitting that, the law empowers the tribunal to vary payable rent, further, that this is not a prerogative of the Landlord.
22. Unto the third issue, the tenant cited section 5 of the Land lord and Tenant (Shops, Hotels & Catering Establishment) Act. He submitted that the Landlord failed to offer peaceful enjoyment of the suit premises to the tenant.
23. On the fourth issue, the tenant submitted humbly that, the Tribunal should be pleased to grant costs to the applicant (tenant).

#### **A. Landlady's Submission**

24. In response to the Tenant's Submissions, and in support of her case, the Landlady filled written submissions dated 20<sup>th</sup> February 2023. She submitted on two issues: whether the Respondent's Notice to terminate the tenancy is valid; and whether the respondent's is entitled to costs.
25. While submitting on the first issue, she cited article 40 of *the Constitution* of Kenya 2010 which protects the right of an owner of a property to enjoy without undue restrictions.
26. She submitted that section 4 of the Act prescribes the form of a format of a notice. That a landlord who wishes to terminate a controlled tenancy or alter it to the detriment of the tenant shall give a notice in the prescribed form.
27. She relied on the case of Adventure Adrenaline Africa Limited vs. Hellen Hartley in which the Tribunal at Mombasa validated a notice by the Landlord to the tenant, wherein the Notice the Landlord intended to evict the tenant for personal use of the premises.
28. Further, the landlady relied on the case of Kasturi Limited v Nyeri Wholesalers Limited [2014] eKLR, in which the Court stated that the Tenant cannot impose himself/herself to the Landlord.
29. It was her humble submissions that she undertook the notice of vacation to the Tenant in line with the provision of the enabling law and therefore the same should be found as valid by this honourable Tribunal.

#### **B. Issues for Determination & Analysis**

30. I have carefully perused all the pleadings and evidence presented before this honourable Court by the parties. It is therefore my respectful finding the sole issue for determination is whether the termination Notice by the Landlord to the tenant is valid.
31. Before I address the merits of this matter, I have carefully considered the documents filed by both parties before this Honourable Court, and it is clear from the very outset that both parties concur to the existence of a tenancy agreement between them.



## **Whether the termination Notice by the Landlord to the tenant is valid.**

32. In addressing this issue, I shall consider two aspects: the formal requirements of a notice for termination of a tenancy agreement and the Landlord's grounds for termination of the tenancy.

### **a) Formal requirements of notice of termination of a tenancy.**

33. Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 Laws of Kenya (hereinafter referred to as the "Act") provides that;

"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."

34. Additionally, Section 4(4) provides that no tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, unless the terms and conditions of the tenancy provide for a period exceeding two months or the parties to the tenancy agree in writing to a lesser period of notice.

35. The two requirements therefore for a valid notice of termination of the tenancy is first, that the notice shall be in the prescribed form and secondly, that the notice shall not take effect until after expiry of two months, or such notice period as may be agreed by the parties.

36. Based on the evidence tendered before this Honourable Court, it is evident that the parties in their agreement did not make provision for the period of notice required before termination of the tenancy agreement. As such, section 4(4) of the Act as mentioned above applies, thus the default notice period for termination of the tenancy herein is two months.

37. The notice to vacate was issued by the Landlady on 5<sup>th</sup> July 2022 required the Tenant to vacate the premised by 1<sup>st</sup> October 2022. I note that the duration of the notice was proper (two months period) as prescribed by the Act therefore in line with the requirements of the Act.

38. Additionally, according to Section 4(2) mentioned above, the notice of termination of tenancy should be the prescribed form, specifically Form A, as provided for in the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966.

39. The Landlady's notice of termination of the tenancy was in the form of Form A as prescribed by the Act. The notice of termination of the tenancy herein therefore was proper as per the requirement of the Act with regard to being in the prescribed form.

40. According to Form A as provided in the Regulations above mentioned, the Landlady's notice to terminate the terms of the Tenancy herein should have specified;

- a. The Landlord's premises occupied by the Tenant;
- b. The duration of the notice of terminating the tenancy and the date when the notice is to take effect;
- c. The grounds for termination of the tenancy;
- d. The requirement that the Tenant should within one month notify the Landlord in writing whether or not the Tenant agrees to comply with the notice as from the date of receipt of the notice.



41. However, in the best interest of justice, I have carefully analyzed the basis and reason for the impugned eviction. The landlady indicated in her termination notice that the reason for the eviction was to repossess the suit premises for her personal use. This in law, does not meet the threshold of substantive test of the disclosure for the grounds of termination, (the tenant is a controlled tenant and as such is statutorily protected). It is in my contention therefore, that the import of all this, is the issue of rent increment.
42. In light of the foregoing, I find that the impugned termination notice lacks merit. The upshot:
  - a. Applicant's Notice of Motion dated 25th November 2022 is hereby allowed.
  - b. The rent increment is reasonable: 10% after 2 years is within the market rates.
  - c. Tenant to pay monthly rent of Kshs. 17,000.00 from 1st May 2023.
  - d. The Landlady to undertake repairs of veranda and toilet within 30 days. In default, tenant can do the same and reclaim from the rent.
  - e. Each party to bear their costs.

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 12TH DAY OF APRIL 2023 IN THE ABSENCE OF ALL PARTIES.**

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

