



**Karumba v Gathanji Kariuki Traders Limited (Tribunal Case
E935 of 2022) [2023] KEBPRT 85 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 85 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E935 OF 2022
GAKUHI CHEGE, VICE CHAIR
FEBRUARY 9, 2023**

BETWEEN

FRIDAH WAMBUA KARUMBA APPLICANT

AND

GATHANJI KARIUKI TRADERS LIMITED RESPONDENT

RULING

1. Through a complaint dated October 21, 2022, the tenant moved this Tribunal under Section 12(4) of Cap 301, Laws of Kenya complaining that the landlord had unlawfully closed down her business premises and crippled its operation without any justification.
2. The tenant also filed a motion dated October 17, 2022 seeking orders to compel the landlord to unlock the business premises known as Good hope Bar, Gathanji and in default, she be allowed to break-in pending hearing of the application and determination thereof.
3. The tenant also sought for an order prohibiting the Respondent from unlawfully intercepting, harassing, trespassing, intimidating and/or evicting, closing or threatening and/or interfering with her quiet enjoyment thereof.
4. It is deposed in the tenant's affidavit in support of the motion that she entered into a tenancy agreement with the Respondent on October 1, 2019 in respect of LR No 3, Gathanji Market. The agreement is marked 'FWK1'. It was a term of the agreement that any party who desired to terminate the agreement would give the other 3 months notice of intention to do so.
5. On or about October 8, 2022, the Applicant deposited Kshs 12,000/- and a further Kshs 2000/- as rent, which was acknowledged by the Respondent vide annexure marked 'FWK2'. The tenant contends that by acknowledging receipt, the Respondent implied intention to renew the tenancy agreement.



6. The tenant renewed her business permit on April 20, 2022 which was set to expire on December 31, 2022 marked 'FWK3'.
7. The tenant deposes that the landlord closed down the business premises without notice thereby crippling her business operations which has occasioned her loss and damage. The landlord is accused of not notifying the tenant that it would not renew the tenancy. She had not failed to meet her rent obligation.
8. Interim orders were given on October 21, 2021 and the application was fixed for hearing inter-partes on November 10, 2022.
9. The application is opposed through the landlord's replying affidavit wherein it is deposed that the Tribunal has no jurisdiction as the lease was for a fixed term from October 1, 2019 to September 30, 2022.
10. According to the landlord, there was no intention to renew the lease and the same was communicated to the tenant vide a letter dated June 30, 2022 issued three months before expiry of the lease marked 'GK-2'.
11. The lease agreement according to the landlord had no renewal clause and it had communicated in writing its intention not to renew it. As such, there was no landlord/tenant relationship after expiry of the lease and the tenant was bound by the contract.
12. It is therefore deposed that the tenant has approached the Tribunal with intention of vexing the landlord into reviewing the lease agreement as the case was filed on October 21, 2022 after the lease had expired. The Respondent denies receiving rent from the tenant as agreed in the agreement and refers the Tribunal to a letter dated July 1, 2021 in which the tenant admitted owing Kshs 77,000/- which had accrued in the period 2020/2021 marked 'GK-3'.
13. According to the landlord, the sum of Kshs 2,000/- and 12,000/- deposited by the tenant was meant for clearing balance accrued and rent for September and was never intended to create an implied renewal of tenancy agreement as shown in receipts marked 'GK-4'.
14. The tenant is accused of breaching the terms of lease and rushing to court after expiry of the agreement to remain in possession of the suit property. The tenant is accused of subletting the premises contrary to clause G of the tenancy agreement.
15. The landlord denies closing the tenant's premises and seeks that the application be dismissed with costs.
16. The landlord filed a preliminary objection on the grounds raised in the replying affidavit to wit that the Tribunal has no jurisdiction as the term of lease had expired by the time of filing the case and there was no intention to renew it. The tenant refused to give vacant possession of the premises after expiry of lease and this Tribunal therefore lacked jurisdiction.
17. Parties were directed to file written submissions but only the landlord complied. I shall advert to the submissions while considering the issues for determination.
18. I am required to determine the following issues based on the pleadings:-
 - a. Whether this Tribunal has jurisdiction to hear and determine the reference.
 - b. Whether the tenant is entitled to the reliefs sought in the application dated October 21, 2021.
 - c. Who is liable to pay costs?.



19. It is submitted on the authority of *Mukisa Biscuits Manufacturing Co Ltd – vs- West End Distributors Ltd (1969) EA 696*, *Republic vs- Chair- person Business Premises Rent Tribunal at Nairobi & Another ex-parte Suraj Housing & Properties Limited & 2 Others (2016) eKLR* and *Republic – vs- Business Premises Rent Tribunal & Another ex-parte Albert Kigera Karume (2015) eKLR* that the Landlord/ Tenant relationship between the parties herein having come to an end meant that the Tribunal would not have jurisdiction and that the preliminary objection ought to be upheld.
20. I have gone through the decisions and note that none of them considered the provisions of Section 12(1)(e) of Cap. 301, Laws of Kenya which provides one of the powers of this Tribunal in the following terms:-
- ' (e)
- To make orders, upon such terms and conditions as it thinks fit, for the recovery of possession and for the payment of arrears of rent and mesne profits, which orders may be applicable to any person whether or not he is a tenant being at any material time in occupation of the premises comprised in a controlled tenancy'.
21. The applicant herein entered into a tenancy agreement with the landlord on October 1, 2019 which was to last for a period of three years from the said date to September 30, 2022. The agreed rent was Kshs 8,000/- subject to an increment of 10% on renewal of the agreement.
22. On June 30, 2022, the landlord issued a notice of non-renewal of the tenancy on account of the tenant's failure to pay two months rent deposit and accrued arrears of Kshs 12,000/-.
23. The last date of surrendering vacant possession passed and the tenant failed to do so and on October 21, 2022 she filed the instant complaint against the landlord seeking the reliefs set out in the earlier parts of this ruling. Interim orders were given by the Tribunal and the landlord was ordered to reopen the suit premises.
24. In the foregoing circumstances, I find that the Tribunal have jurisdiction to deal with the complaint and to order the tenant pursuant to Section 12(1)(e) as read with Section 12(4) of Cap 301, Laws of Kenya to surrender vacant possession of the suit premises in line with the decision in the Court of Appeal case of *Kasturi Ltd vs- Nyeri Wholesalers Ltd (2014) eKLR* at paragraph 15 where it was held as follows:-
- ' 15.....in the present case, it is plain that the tenancy agreement between the parties expired on April 14, 2009 and has never been renewed. It is also plain that the appellant received a notice for non- renewal of the tenancy. We concur with the learned judge that the appellant has no triable issue in the counter-claim for vacant possession. It is the duty of the courts to ensure that no individual is prevented from taking possession and/or enjoying their property. A tenant cannot impose, force him/herself/itself on a landlord'.
25. In the circumstances, I find that the notice of preliminary objection by the landlord is misconceived and a candidate for dismissal.
26. In regard to the prayers sought by the tenant in the complaint and the application, I find that the lease having come to an end and there being no extension by mutual agreement of both parties, this Tribunal will be creating a new contract by granting restraining orders against the Landlord/Respondent. The duty of courts is to interpret contracts and not to make contracts for parties. This is what the superior



court said in *National Bank of Kenya Limited – vs- Pipelastic Samkolit (K) Ltd & Another (2001) eKLR* at page 4/5 where it was held thus:-

' A court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was no remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge'.

27. I therefore find and hold that the applicant has miserably failed to bring herself within the principles considered in an application for injunction espoused in the Locus Classicus case of *Giella – vs- Cassman Brown & Co Ltd (1973) EA 358*. The application and complaint are for dismissal.
28. In line with Article 159(2) (d) of the Constitution of Kenya, 2010 which impels this Tribunal inter-alia to administer justice without undue regard to procedural technicalities and in order also not to delay justice for the landlord who has had to wait for 4 months to regain possession of the suit premises on account of the pendency of the instant proceedings, I shall invoke the inherent power of the Tribunal to make an order for vacant possession against the tenant who shall also be liable to pay mesne profits as stipulated under Section 12(1) (1) (e) of Cap 301, Laws of Kenya at the rate of Kshs 8000/- per month from October 1, 2022 to the date of delivery of vacant possession or eviction therefrom.
29. As regards costs, the same are in the Tribunal's jurisdiction but always follow the event unless for good reasons otherwise ordered under section 12(1) (k) of Cap 301, Laws of Kenya. The Landlord having failed in its preliminary objection on jurisdiction is not entitled to any costs against the tenant.
30. In conclusion, the final orders which commend to me under Section 12(4) of Cap 301, Laws of Kenya are:-
 - a. The tenant's application dated October 17, 2022 and the complaint dated October 21, 2022 are hereby dismissed.
 - b. The Landlord's notice of preliminary objection dated November 5, 2022 is dismissed.
 - c. The tenant shall deliver vacant possession of the suit premises known as Good Hope Bar, Gathanji forthwith and in default shall be evicted therefrom by a licensed Auctioneer who shall be provided with security by the OCS, Githunguri Police Station.
 - d. The tenant shall pay mesne profits at a rate of Kshs 8000/- per month from October 1, 2022 until she vacates or is evicted therefrom together with any rent in arrears.
 - e. Each party shall bear own costs of the suit.

It is so ordered.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 9TH DAY OF FEBRUARY 2023.

HON. GAKUHI CHEGE

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the absence of:-

Outa for the Landlord/Respondent

Mungai holding brief for Gikenye for the Applicant

