



**Imbo v Ochieng (Tribunal Case E018 of 2024)
[2024] KEBPRT 1427 (KLR) (24 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1427 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E018 OF 2024
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
SEPTEMBER 24, 2024**

BETWEEN

LEAH ACHIENG' IMBO TENANT

AND

CAROLINE OCHIENG LANDLORD

RULING

1. This Ruling is on the Application dated 23.5.2024 by M/S Leah Achieng' Imbo who alleges to be a Tenant in a store located along Ojino-Okew street in Kisumu. The Application is founded on Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (Cap 301) hereinafter "the Act".
2. The Applicant sought that the Landlord be restrained from interfering with her quiet possession of the stall No. SA 11 pending the hearing and determination of the Application and also the Reference dated 23.05.2024. she also sought for costs.
3. According to the Applicant, she got the said stall from one George Ouma Adino and Francis Oyamo the chairman and secretary respectively of the city market lower Ojino Okew Management Committee who also doubled up as the Respondent's agents.
4. The Applicant asserted that she paid to the two agents Kshs. 15,000/= being security deposit for rent and that she had been paying Kshs. 5,000/= monthly between December, 2023 and March 2024 and had been in quiet possession of the stall. That however, her attempt to pay the rent for April, 2024 to the Respondent that she reversed the payment and that she had since locked up the stall in breach of the law.
5. On her part, the Respondent filed the Replying affidavit sworn on the 4.6.2024 and denied that the Applicant was her Tenant. She also denied having ever received any rent deposit or monthly rent from



- the Tenant for the stall. She asserted that the Applicant was a stranger to her and her Application and suit therefore lacked in any merit. She sought that her Application and suit be dismissed with costs.
6. The Applicant filed a Further affidavit sworn on the 20.6.2024 in which she asserted that she took possession of the stall described as stall No. SA11 with the knowledge of the Respondent through the Market's management Committee which acted as her agents.
 7. That since April, 2024, she has been paying rent directly to the Respondent. She therefore sought for the protection of this court as hers was a controlled tenancy pursuant to the Act.
 8. After the close of the pleadings, directions were taken to have the parties file their respective submissions. The Landlord filed her submissions though indicated as owned by the Applicant are dated the 5.09.2024. The Applicant on her part was not responsive in that regard.
 9. Having perused the pleadings herein and also the Landlord's submissions, it is our view that the only issues for determination in this matter is whether there exists a Landlord and Tenant relationship between the Applicant and the Respondent and who should bear the costs of this suit.
 10. On whether there exists a Landlord and Tenant relationship between the parties, it has not been disputed that the Tenant took possession of stall No. SA 11 in December 2023. Indeed the Respondent has not addressed the claim by the Tenant that one George Ouma Adino and Francis Oyamo the chairperson and secretary respectively of the City Market Lower Ojino Okew were her agents and that they collected Kshs. 15,000/= being the rents for January, February and March, 2024 at Kshs. 5,000/= per month on her behalf.
 11. The Respondent has also not offered any explanation as to how the Applicant could be at her premises from January to April, 2024 without her knowledge and without her exerting her rights over stall No. SA 11 if the Applicant was not her Tenant.
 12. The Applicant vide annexure "LAI-1" has also demonstrated that she has also been paying rent to the Respondent through her Mpesa account and which money has been paid as rent. In that regard, this court is able to establish that the relationship between the Applicant and the Respondent is that of a Tenant and Landlord. The same therefore falls squarely within the jurisdiction of this court under Section 2(1) of the Act.
 13. Having established that, it then follows that any alteration of the terms of the controlled tenancy either written or inferred from the Terms and Conditions to be implied in Controlled Tenancies must be compliant with the Act.
 14. In this case, the Respondent has not in anyway purported to have complied with Sections 4(2), 4(4) and 7(1) of the Act nor Regulation 4(1) of the Regulations to the Act. The parties relationship would therefore be ordered to be in subsistence unless otherwise terminated by application of the law.
 15. The Respondent has not denied that the management of the City market that initially acted as her agents had indeed locked up the stall known as SA 11. The said officers of the City market management who were actually mentioned by name never refuted the Applicant's assertion that they were the agents of the Respondent, collected rent on her behalf and eventually locked up the subject stall.
 16. In all, we find that the Applicant had a right to move this court for protection of her fundamental rights as a Tenant under the Act. In this, we rely on the case of; Manaver N. Alibhai t/a Diani Boutique vs South Coast Fitness & Sports Centre Ltd [1995] eKLR where the court held that;

“The Act lays down clearly and in detail, the procedure for the termination of a controlled tenancy, Section 4(1) of the Act states in very clear language that a controlled tenancy shall



not terminate or be terminated and no terms or condition in, or right or service enjoyed by the Tenant of, any such tenancy shall be altered, otherwise than in accordance with specific provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the Tenant. The notice must also specify the grounds on which termination is sought. The prescribed notice in form A also requires the landlord to ask the Tenant to notify him in writing whether or not the Tenant agrees to comply with the notice.”

17. We also determine that the Applicant is the successful party in these proceedings and we have no reason nor justification to deny her costs. We therefore and in compliance with Section 27 of the Civil Procedure Act and the proviso thereof award costs to the Applicant.
18. In the final analysis, we make the following orders;-
 - i. That the Application and Reference both dated 23.5.2024 are allowed in terms that the Tenant/Applicant shall be allowed quiet possession of the stall known as SA 11 within the City market lower Ojino Okew.
 - ii. That the Tenant is awarded costs assessed at Kshs. 10,000/= to be offset from rent payable to the Landlord.

Those are the orders of the court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF SEPTEMBER, 2024.

HON. NDEGWA WAHOME, MBS

PANEL CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

AND

HON. JOYCE MURIGI

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Saro for the Landlord and in the absence of the Tenant

