



Wambui v Meru Central Coffee Cooperative Union Limited (Tribunal Case E1201 of 2022) [2024] KEBPRT 1737 (KLR) (Civ) (10 December 2024) (Judgment)

Neutral citation: [2024] KEBPRT 1737 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E1201 OF 2022
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
DECEMBER 10, 2024**

BETWEEN

MARIA WAMBUI TENANT

AND

MERU CENTRAL COFFEE COOPERATIVE UNION LIMITED LANDLORD

JUDGMENT

A. Dispute Background

1. The tenant/applicant moved this Tribunal vide a Reference dated 18th December 2022 pursuant to Section 6(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301, Laws of Kenya objecting to the Landlord's notice to terminate her tenancy dated 7th November 2022. The said notice was expressed to take effect on 1st February 2023.
2. The tenancy notice is based on the ground that the landlord requires the business premises for its own use for a period of not less than one year.
3. On 29th August 2023, the parties were directed to comply with Order 11 of the Civil Procedure Rules through filing of witnesses' statements and documents. The landlord filed a witness statement dated 18th September 2023 by its Chief Executive Officer one Joseph Kiogora together with its list and bundle of documents dated 1st December 2023 and a further list dated 9th February 2024.
4. On the other hand, the tenant filed her undated witness statement and a list of documents dated 1st December 2023.
5. The matter was thereafter set down for hearing when both parties adopted their respective witnesses' statements and documents and were duly cross examined by the adverse Counsel.



6. The landlord's witness testified that the tenant occupies the premises known as Imenti House on Plot Number L.R 209/2437 on the ground floor measuring about 1415 Square Ft within Nairobi County (hereinafter referred to as the suit premises). It is the landlord's case that the tenant is not in actual possession of the suit premises but instead has subdivided and sublet the same to sub-tenants. The said subdivision was allegedly undertaken by the tenant without the consent of the landlord.
7. The tenancy is based on an old arrangement prior to 1st October 2019. After 1st October 2019, the landlord undertook an exercise to re-evaluate the premises and issued new offer letters to all the tenants in the premises and issued new leases to the tenants who responded positively to the offer letters. The tenant herein failed to respond to the offer letter or any of the letters that were sent by the landlord and as a result, the landlord could not issue a new lease agreement to her.
8. The landlord further wrote a letter dated 7th December 2020 indicating that the tenant's lease would not be renewed but it was also unanswered. The landlord filed a notice to terminate tenancy dated the 7th November 2022 which was expressed to expire on 1st February 2023 but the tenant opposed it giving rise to this reference.
9. The landlord in the notice dated 7th November 2022 stated that it wished to take vacant possession of the suit premises for its own use for a period of not less than one year. The landlord indicated that it intends to start a Meru Central Coffee Brand business outlet whose plans were underway. The landlord further stated that it intends to further its coffee investment through a Supermarket that retails products affiliated to Meru Coffee which is its core business.
10. According to the landlord, the tenant continues to occupy the suit premises in absence of a lease having blatantly refused to respond to any of the letters issued by it and continues to deprive the landlord of its right to own and access property as envisaged by Article 40 of *the Constitution* of Kenya, 2010.
11. The tenant is accused of having overstayed in the suit premises and of deriving immense profits through subletting albeit without the consent of the landlord. It is the landlord's view that the nature of a landlord-tenant relationship envisages that at some point it will come to an end where there is no renewal. The landlord further contends that having complied with Section 4 of Cap 301, it has a right to seek for vacant possession against the tenant.
12. It is on the basis of said grounds that the landlord prays that the Reference herein be dismissed with costs and that the tenant herein together with all her sub-tenants be ordered to give vacant possession of the suit premises.
13. On the other hand, the tenant stated that she has been in occupation of the landlord's premises on the Ground Floor of Imenti House on L.R No. 209/2437, Nairobi, for more than twenty years and that her tenancy has never been reduced into writing. During that period, she has been operating exhibition Stalls.
14. It is the tenant's evidence that she divided the premises into 15 Stalls. She testified that she was the first tenant in Imenti House to convert her Shop into Stalls. All the other Stalls within the building were put up later.
15. Her problems with the landlord started when, by a letter dated 1st October 2019, the landlord required her to enter into a lease agreement with it for a term of Ten (10) years. Among the terms of the proposed lease was a requirement to pay to the landlord a sum of Kshs.5,000,000/= as goodwill
16. Whereas the tenant did not mind entering into a Ten (10) years' lease agreement with the landlord, she was not agreeable to pay landlord the demanded sum of Kshs. 5, 000, 000/= as goodwill.



17. By a letter dated 7th December 2020, the landlord wrote to the tenant as follows:
- “Kindly note that your current Lease will expire on 30th June 2021 without the option of renewal. This is therefore to inform you that the Union shall thereafter take possession of the premises without any further notice upon the expiry of your current Lease extension”
18. The tenant maintains that there has never been any written lease agreement between her and the landlord. She was therefore surprised that the landlord was talking about a lease which was supposed to expire on 30th June 2021.
19. She tried to reach out to the management of Imenti House with a view to resolving the issue, but they were adamant that she had to vacate the suit premises by 30th June 2021
20. On 31st May 2021, she was served with a letter from TONER WORLD LIMITED dated 31st May 2021. The letter was addressed to her sub-tenants and copied to her and Vitalis Kirimi of MERU CENTRAL COFFEE CO-OPERATIVE UNION LIMITED, purporting to inform her Sub-tenants of change in management of her Stalls.
21. When it became apparent that the landlord wanted to evict her and hand over the Stalls to TONER WORLD LIMITED, she filed a Reference in this Tribunal, being BPRT Case No. E182 of 2021 together with a notice of motion under a Certificate of Urgency, all dated 7th June 2021. On 20th December 2021, this Tribunal ruled in the tenant’s favour and issued Orders restraining the landlord from evicting her. On 12th May 2022, the Reference was by consent of the parties marked as settled with costs to the tenant.
22. In November 2022, which was only six months after recording the consent to have BPRT Case No. E182 of 2021 marked as settled with costs to the tenant, she was served with the tenancy notice dated 7th November 2022, seeking to terminate her tenancy with effect from 1st February 2023. The said notice is now the subject of the Reference herein.
23. The tenant testified that she is convinced that the real reason why the landlord wants to terminate her tenancy is because she refused to sign a lease agreement which required her to pay Kshs, 5,000,000/= to the landlord as goodwill. The landlord is accused of wanting to let out the premises to somebody else so that it can charge goodwill for the same.
24. After close of both parties’ cases, each filed submissions. The landlord’s submissions are dated 3rd October 2024 while the tenant’s submissions are dated 22nd October 2024. We have read and taken the submissions in arriving at our decision herein.

B. ISSUES FOR DETERMINATION

25. The following issues arise for determination; -
- a. Whether the tenancy notice issued by the landlord ought to be approved or dismissed.
 - b. Who shall bear the costs of the reference?

Issue a) Whether the tenancy notice issued by the landlord ought to be approved or dismissed.

26. As observed above, the tenant moved this Tribunal vide a Reference dated 18th December 2022 pursuant to Section 6(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301, Laws of Kenya objecting to the Landlord’s notice to terminate her tenancy dated 7th November 2022. The said notice was expressed to take effect on 1st February 2023. The tenancy notice



is based on the ground that the landlord requires the business premises for its own use for a period of not less than one year.

27. It is not contested that the tenancy herein is controlled within the meaning and interpretation of Section 2(1) of Cap 301, Laws of Kenya. Sections 4(1) & (2) of the said statute which provides as follows;

“(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with the following provisions of this Act.

(2) 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.”

28. We have looked at the tenancy notice served upon the tenant and confirmed that the same is in tandem with the foregoing legal provisions. The same is therefore valid.

29. Section 6(1) of the same statute provides as follows;

“6. Reference to Tribunal

1. A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal:

Provided that a Tribunal may, for sufficient reason and on such conditions as it may think fit, permit such a reference notwithstanding that the receiving party has not complied with any of the requirements of this section.”

30. In compliance with the foregoing legal provision, the tenant filed the instant reference objecting to the notice. This Tribunal is therefore required to inquire into the said notice and decide whether or not, the reasons set out therein have been proved by the landlord in line with Section 9(1) of the said statute.

31. The ground for termination of tenancy set out in the landlord’s tenancy notice is provided for under Section 7(1)(g) of the said statute which stipulates as follows;

“(g) subject as hereinafter provided, that on the termination of the tenancy the landlord himself intends to occupy for a period of not less than one year the premises comprised in the tenancy for the purposes, or partly for the purposes, of a business to be carried on by him therein, or at his residence.”

32. The landlord’s witness testified that the tenant occupies the premises known as Imenti House on Plot Number L.R 209/2437 located on the ground floor measuring about 1415 Square Ft within Nairobi County. It is the landlord’s case that the tenant is not in actual possession of the suit premises but instead has subdivided and sublet the same to sub-tenants. The said subdivision was undertaken by the tenant allegedly without the consent of the landlord. It is to be noted that the issue of alleged subletting of the suit premises without consent is not cited as a ground for termination in the impugned notice.



33. He further stated that the tenancy is based on an old arrangement prior to the 1st October 2019. After the 1st October 2019, the landlord undertook an exercise to re-evaluate the premises and issued new offer letters to all the tenants in the premises and further issued new leases to the tenants who responded positively to the offer letters. The tenant herein failed to respond to the offer letter or any of the letters that were sent by the landlord and as a result, the landlord could not issue a new lease agreement to her.
34. The landlord further wrote a letter dated the 7th December 2020 indicating that the tenant's lease would not be renewed but it was also unanswered. The landlord filed a notice to terminate tenancy dated the 7th November 2022 which expired on 1st February 2023. However, the tenant opposed the same giving rise to this reference.
35. The landlord in the notice dated 7th November 2022 stated that it wished to take vacant possession of the suit premises for its own use for a period of not less than one year. The landlord stated that it intends to start a Meru Central Coffee Brand business outlet whose plans were underway. The landlord testified that it intends to further its coffee investment through a Supermarket that retails products affiliated to Meru Coffee which is its core business.
36. According to the landlord, the tenant continues to occupy the suit premises in absence of a lease having blatantly refused to respond to any of the letters issued by it and continues to deprive it of the right to own and access property as envisaged by Article 40 of *the Constitution* of Kenya, 2010.
37. The tenant is accused of having overstayed in the suit premises and of deriving immense profits through subletting albeit without the consent of the landlord. It is the landlord's view that the nature of a landlord-tenant relationship envisages that at some point it would come to an end where there was no renewal. The landlord further contends that having complied with Section 4 of Cap 301, it has a right to seek for vacant possession against the tenant.
38. It is on the aforementioned grounds that the landlord prays that the reference herein be dismissed with costs and that the tenant herein together with all her sub-tenants be ordered to give vacant possession of the suit premises.
39. On the other hand, the tenant states that she has been in occupation of the landlord's premises on the Ground Floor of Imenti House on L.R No. 209/2437, Nairobi, for more than twenty years and that her tenancy has never been reduced into writing. During that period, she has been operating exhibition Stalls.
40. It is the tenant's evidence that she divided the premises into 15 Stalls. She testified that she was the first tenant in Imenti House to convert her Shop into Stalls. All the other Stalls within the building were put up later.
41. Her problems with the landlord started when, by a letter dated 1st October 2019, the landlord required her to enter into a lease agreement with it for a term of Ten (10) years. Among the terms of the proposed lease was a requirement to pay to the landlord a sum of Kshs.5,000,000/= as goodwill
42. Whereas the tenant did not mind entering into a Ten (10) years' lease agreement with the landlord, she was not agreeable to pay the landlord, the demanded sum of Kshs. 5,000, 000/= as goodwill.
43. By a letter dated 7th December 2020, the landlord wrote to the tenant as follows:

“Kindly note that your current Lease will expire on 30th June 2021 without the option of renewal. This is therefore to inform you that the Union shall thereafter take possession of the premises without any further notice upon the expiry of your current Lease extension”



44. The tenant maintains that there has never been any written lease agreement between her and the landlord. She was therefore surprised that the landlord was talking about a lease which was supposed to expire on 30th June 2021.
45. She tried to reach out to the management of Imenti House with a view to resolving the issue, but they were adamant that she had to vacate the premises by 30th June 2021.
46. On 31st May 2021, she was served with a letter from TONER WORLD LIMITED dated 31st May 2021. The letter was addressed to her sub-tenants and copied to her and Vitalis Kirimi of MERU CENTRAL COFFEE CO-OPERATIVE UNION LIMITED, purporting to inform her Sub-tenants of change in management of her Stalls.
47. When it became apparent that the landlord wanted to evict her and hand over the Stalls to TONER WORLD LIMITED, she filed a Reference in this Tribunal, being BPRT Case No. E182 of 2021 and also a Notice of Motion under a Certificate of Urgency, all dated 7th June 2021. On 20th December 2021, this Tribunal ruled in the tenant's favour and issued Orders restraining the landlord from evicting her. On 12th May 2022, the Reference was by consent of the parties marked as settled with costs to the tenant.
48. In November 2022, which was only six months after recording the consent to have BPRT Case No. E182 of 2021 marked as settled with costs to the tenant, she was served with the tenancy notice dated 7th November 2022, seeking to terminate her tenancy with effect from 1st February 2023. The said notice is now the subject matter of this Reference.
49. The tenant testified that she is convinced that the real reason why the landlord wants to terminate her tenancy is because she refused to sign a lease agreement which required her to pay Kshs, 5,000,000/= to the Landlord as goodwill. The landlord is accused of wanting to let out the premises to somebody else so that it can charge goodwill for the same.
50. Having weighed the evidence adduced by both parties, we are convinced beyond any peradventure that the tenant's position on the reasons behind termination of her tenancy is more probable than those of the landlord. It is clear that the termination came as an afterthought when she failed to execute the lease agreement and to pay the demanded sum of Kshs 5,000,000/=. Being a controlled tenant, there was no basis for such a demand especially coming hot on the heels of the settlement of a previous litigation between the two parties.
51. It is to be noted that the landlord did not provide sufficient evidence on how it intends to use the suit premises upon the tenant giving vacant possession thereof. There was no single Board resolution nor business plan to back the intended user. It is therefore not established that the landlord has a genuine and settled intention to use the suit premises for its own purpose and that such use requires the tenant to deliver vacant possession. It is trite law that he who alleges must prove.
52. It is noted that by a letter dated 1st October 2019, the landlord had offered to extend the tenant's lease by ten (10) years. It is not clear when the said intention changed and the landlord's decision taken to take over the suit premises for its own business purpose. We are not convinced that the landlord has a genuine intention to use the suit premises for own business.
53. In the case of Auto Engineering Ltd Vs Gonella & Co. Ltd (1978) eKLR the Superior court held as follows;

“ The first authority to which Mr Esmail referred us in connection with this part of his appeal was Fisher v Taylors Furnishing Stores Ltd [1956] 2 All ER 78, and he referred us to a passage



from the judgment of Morris LJ at page 81, in reference to section 30(1)(f) of the Landlord and Tenant Act 1954, which is as follows:

“There must, therefore, be an intention and it must be an intention which in point of time is related to the termination of the current tenancy. It seems to me that the intention must be to do one of the following things:

- (i) to demolish the premises comprised in the holding; or
- (ii) to reconstruct the premises comprised in the holding; or
- (iii) to demolish a substantial part of the premises comprised in the holding; or
- (iv) to reconstruct a substantial part of the premises comprised in the holding; or
- (v) to carry out substantial work of construction on the holding; or
- (vi) to carry out substantial work of construction on a part of the holding.” Emphasis added)

54. By parity of reasoning, the landlord was obligated to provide evidence on a balance of probabilities that it has a genuine and settled intention to use the suit premises for more than one year which cannot happen without the tenant giving vacant possession.
55. In view of the foregoing, the tenant’s Reference dated 18th December 2022 is hereby allowed and the tenancy notice issued to the tenant by the landlord is consequently disapproved in line with Section 9(1) of Cap 301.

Issue (b) Who shall bear the costs of the reference?

56. As regards costs, the same are in the Tribunal’s discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall award costs of the reference to the tenant being the successful party.

C. ORDERS

57. In view of the above analysis, the final orders which commend to us are;
- a. The tenants’ Reference dated 18th December 2022 is allowed and the notice of termination of tenancy dated 7th November 2022 is hereby disapproved.
 - b. The landlord shall pay costs of Kshs 50,000/= to the tenant which shall be defrayed against the rent account.

It is so ordered.

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 10TH DAY OF DECEMBER 2024

HON. GAKUHI CHEGE

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON. JOYCE AKINYI OSODO



(MEMBER)

In the presence of:

Miss Monyangi for the landlord

Mr Kang'ata for the tenant

