



REPUBLIC OF KENYA

BUSINESS PREMISES RENT TRIBUNAL

TRIBUNAL CASE NO 154 OF 2021 (NAIROBI)

SALMON AHMED RIZVI.....TENANT/APPLICANT

VERSUS

REV ANTONY BONES.....LANDLORD/1ST RESPONDENT

GOOD SHEPHERD AFRICA GOSPEL CHURCH.....LANDLORD/2ND RESPONDENT

RULING

The ruling is in respect of the Tenant's/Applicant's application dated **15th February 2021** in which the Tenant seeks;

1. Spent
2. That the Landlord/Respondent allows the Tenant to continue with the business as per the lease agreement without interruption.
3. That the Landlord be prohibited forthwith by this honourable Tribunal from in any manner whatsoever and/or howsoever interfering with the Applicant's quiet occupation and lawful enjoyment of the suit premises located at Ngong Road. ((I have summarized this prayer).
4. That OCS Kilimani Police Station to assist with compliance with the orders.
5. Costs.

The grounds on which the application is based may be summarized as follows;

- i. That there exists a valid agreement between the parties herein with concise terms and conditions.
- ii. That the Respondent's notice of termination is illegal and contrary to the provisions of **Cap 301 Laws of Kenya**.
- iii. That the Applicant is a protected Tenant.
- iv. That the Tenant is not in any rent arrears.
- v. That the Landlord wants the Tenant to vacate the premises by its unjustified acts of nuisance.
- vi. That the Landlord has spent approximately 3 million shillings in improving the demises premises.

The application is further supported by the affidavit of Raheel Yousuf sworn on **15th February 2021**. I have read the same and the annexures thereof.

The application is opposed by the Respondents vide the replying affidavit of Rev. Antony Bones sworn on **4th March 2021** and whose contents I summarize as follows;

- i. That on **4th December 2019**, the Applicant entered into a lease agreement with the 2nd Respondent.
- ii. That as per clause 10 of the said lease, the Tenant is prohibited from subleasing the demised premises without the written

approval of the 2nd Respondent.

- iii. That the Tenant has parted with possession of the site in breach of the agreement, to one Raheel Youssuf.
- iv. That Raheel Yousuf is not competent to swear the supporting affidavit.
- v. That the Applicant's suit offends **section 19 of the Civil Procedure Act Cap 21 and order 3 rule (1) of the Civil Procedure Rules** and therefore ought to be dismissed.
- vi. That the Tenant has changed the user of the demised premises without complying with the requisite regulations.
- vii. That the 2nd Respondents use of the premises is strictly religious and not commercial.
- viii. That the Nairobi Metropolitan Services has informed the 2nd Respondent that it is in contravention of the authorized user of the demised premises.
- ix. That the Tenant is in breach of clause 12 of the lease agreement.
- x. That the Tenant had promised to vacate the demised premises by **March 2021**.
- xi. That the Tenant is using the Tribunal to illegally extend his lease on the demised premises.

On **6th April 2021**, the parties herein were ordered to file and exchange written submissions in support of their respective cases. As at the time of writing this ruling none of the parties had filed their submissions in support of their respective cases. As at the time of writing this ruling, none of the parties had filed their submissions and I will therefore proceed to determine the application based on the affidavit on record.

In my view, the issues that call for my determination are as follows;

1. Whether there exists a valid lease agreement between the parties herein and if so, whether the said lease qualifies the Tenant/Applicant as a protected Tenant.
2. Whether the Respondent's notice of termination of the lease is illegal and contrary to the provisions of **Cap 301 Laws of Kenya**.
3. Whether the Tenant is entitled to the orders sought in his application dated **15th February 2021**.

On Issue No. 1

It is common ground that there indeed exists a lease agreement between the parties herein. A certified copy of the letter of offer containing the agreed terms and conditions of the lease has been introduced vide exhibit RY02 in the Tenant's affidavit. The existence of the said lease is further confirmed by the 1st Respondent at paragraph 3 of his replying affidavit. The lease expresses itself to be for a period of three years commencing 1st January 2020. I therefore do find that the tenancy between the parties herein is a controlled tenancy. The Tenant/Applicant is therefore a protected Tenant within the meaning of the said term under **Cap 301**.

On Issue No. 2

The Respondent's notice of termination of lease complained of is the one dated **7th September 2020**. It is by way of a letter addressed to the Tenant/Applicant. The reasons given in the said letter for the termination are that local government stipulations do not allow the Respondent to operate as a business entity. The letter further requires the Tenant to vacate the premises within the next two months (60 days).

Having found that the tenancy between the Applicant and the Respondent is a controlled tenancy, the same can only be terminated under the provisions of **Cap 301**.

Section 4(2) of the said Act is in the following terms;

"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 on service enjoyed by the Tenant under such tenancy shall give notice in that behalf to the Tenant in the prescribed form" (underlining mine).

The prescribed form under **section 4(2)** aforesaid is form A of the schedule in the Act. The "termination of lease agreement" dated **7th September 2020** issued by the Respondent does not meet the mandatory requirements of the Act. It is not in the "mandatory" required form. I therefore do find that the notice contravenes the express provisions of **section 4(2) of Cap 301** and is therefore invalid. I also find that the notice offends the provisions of **section 4(5)** for failing to require the receiving party to notify the requesting party in writing within one month after the date of receipt of the notice, whether or not he agrees to comply with the notice.

On Issue No. 3

I have already found that there exists a valid lease agreement between the parties herein, the said lease is governed by the provisions of **Cap 301**, the tenancy between the parties being a controlled tenancy. I have further found that the said tenancy can only be terminated under the provisions of **Cap 301** and specifically **section 4** thereof. The Respondent has ignored the mandatory procedure provided for under the Act. The Applicant's contention that the Respondent's notice of termination is illegal and contrary to the provisions of **Cap 301** is therefore not an idle one.

The Respondent has stated that the Applicant has parted with possession of the premises and has in effect sublet the same to one Raheel Yousuf. I do not find from the material placed before me any evidence of a sublease to the said Raheel Yousuf. I also do not and have not found any evidence from the material placed before me, that the Applicant is using the demised premises for a purpose other than that for which the premises was let.

At this stage, I am therefore not able to find that the Applicant has changed the user of the suit premises without the authority and approval of the Respondent or any other authority.

The Respondent has also stated that its use of the premises is strictly religious and not commercial, that may be so, but it is the same Respondent who entered an agreement with the Applicant for the use of the said premises. It would not be fair for the Respondent to run away from its own agreement when it is convenient so to do.

The other issue of importance raised by the Respondent is that the deponent of the Applicant's affidavit is not competent to swear the supporting affidavit.

I have seen a memo addressed to Good Shepherd Gospel Assembly Church by one Salman Ahmed Rizvi the Applicant. The said memo is the Applicant's exhibit RY01. The said memo introduces one Mr Raheel Yousuf to the Respondent and grants him the authority to act on behalf of the writer/Applicant.

The memo has not been challenged as not being authentic. At this stage, I am willing to find and do find that the authority exhibited is sufficient for the purposes of swearing the supporting affidavit.

Following from the above, I do find that the Applicant's application dated **15th February 2021** has merit and the same is allowed in terms of prayers 2, 3, 4 and 5.

CYPRIAN MUGAMBI NGUTHARI

CHAIRMAN

BUSINESS PREMISES RENT TRIBUNAL

Court:

Ruling dated and delivered virtually by **Hon Cyprian Mugambi Nguthari** this **7th** day of **May, 2021** in the presence of **Ayabei** for the **Tenant** and **Amanya** for the **Landlord**.

HON CYPRIAN MUGAMBI NGUTHARI

CHAIRMAN

BUSINESS PREMISES RENT TRIBUNAL