



REPUBLIC OF KENYA



KENYA LAW
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**Njogu v Wanza (Tribunal Case E1375 of 2022)
[2023] KERRT 1177 (KLR) (25 May 2023) (Judgment)**

Neutral citation: [2023] KERRT 1177 (KLR)

**REPUBLIC OF KENYA
IN THE RENT RESTRICTION TRIBUNAL
TRIBUNAL CASE E1375 OF 2022
HK KORIR, CHAIR
MAY 25, 2023**

BETWEEN

ANNIE WANJIRU NJOGU APPLICANT

AND

AGNES WANZA RESPONDENT

JUDGMENT

Parties and Their Representatives

1. The applicant herein is the tenant occupying the premises located in Kariobangi occupying premises Number A75E.
2. The applicant is represented by the firm of Yator and Associates Advocates. Email: yattorsadvocates@gmail.com
3. The Respondent is the Landlady of the Suit Premises that are the subject matter of the present suit and therefore responsible for performing the duties and obligations of the Landlady.
4. The Respondent is represented by the firm of M/s Faith Akoth Oketch & Company Advocates. Email: faithoketchadvocates@gmail.com

Dispute Background

5. Through a plaint dated 2nd December 2022 and a Notice of Motion Application dated 2nd December 2022, the Plaintiff herein approached this Tribunal seeking inter alia, orders restraining the respondent from interfering with quiet possession and enjoyment of the said suit premises pending hearing and determination of this suit.



The Applicants Case

6. The Plaintiff's Notice of Motion Application dated 2nd December 2022 above mentioned is supported by key grounds being that the landlady is in the process of evicting the tenant from the said premises and that the landlady may evict the applicant without giving her time as required by the law.
7. The Application is supported the affidavit sworn by Annie Wanjiru Njogu, the Applicant on 2nd December 2022. The said Affidavit gives the background of the suit. The applicant avers that she is apprehensive that the landlady shall evict her from the suit premises without giving her ample time as required by law. She requested that in the interest of justice, the tribunal issues orders restraining the landlady from evicting her without proper notice.

The Respondents Case

8. The Respondent/ Landlady herein, Agnes Wanza filed a Statement of defence and Counterclaim dated 16th December 2022. She claimed that the applicant was a serial rent defaulter and had accrued rent arrears of ksh 161,000 / = as at December 2022. She further claimed that she had served the applicant with several notices to vacate in order for repairs to be carried out but the applicant has been adamant.
9. The Respondent sought for inter alia, orders that, the applicant's application and suit be dismissed with costs, recovery of the rent arrears plus interests by way of distress and vacant possession for necessary repairs to be undertaken.
10. The Respondent also filed a replying affidavit dated 16th December 2022. She averred that the applicant has severally been issued with notices to vacate which she has ignored. She continues to aver that indeed that the suit premises are need of repairs and the applicant has been adamant to vacate to pave way for repairs to be undertaken. Moreover, the Respondent also reported the matter to the area chief who tried to resolve the matter to no avail.

Submissions

11. The suit proceeded for hearing physically. On 17th April 2023, parties were directed to file and serve written submission. As at the time of writing this judgement only the Respondent had filed their submissions. I shall proceed to consider the same.

The Defendants Submissions

12. MS Faith Oketch on record for the Respondents filed written submissions dated 19th April 2023. The learned counsel presented to this Tribunal three issues for determination namely; whether the tenant should give vacant possession, whether the defence and the counterclaim is merited and who should be awarded the costs of the suit.
13. On whether the tenant should give vacant possession, counsel submitted that the Landlady issued the tenant with a notice to vacate which was to take effect on 25/08/2022 but was extended up to December 2022 upon request by the tenant to enable her secure alternative accommodation. The extension was granted on condition that she vacates. Counsel further submitted that the tenant has had 9 months to plan herself and vacate and that that was sufficient time. Finally, counsel submitted that the suit property has since exchanged hands as it has been sold to a third party as per the agreement for sale dated 9th December 2022 filed in court and it would be fair and just that the tenant grants vacant possession to enable the Respondent perform her obligation in the contract executed by the parties.



14. On whether the defence and the counterclaim is merited, counsel submitted that the averments by the tenant that she spent ksh 25,000 / = in repairs of the suit premises are untrue as the tenant is the one who constructed unwanted structures without the permission of the Landlady and therefore the tenant is not entitled to the claim and it should be dismissed with costs to the landlady. Counsel further submitted that the tenant has failed in fulfilling her obligation of paying rent as and when required and therefore the Landlady is entitled to levy distress to recover the arrears.
15. As to who should be awarded costs, counsel submitted that the respondent is entitled to the costs as the suit was necessitated by the tenant after she defied the notice to vacate. Counsel finally submitted that the Respondent has proved her case on a balance of probability and the orders sought ought to be granted in the interest of justice.
16. The learned counsel urged this tribunal to dismiss the Tenant's suit with costs, direct the tenant to give vacant possession with immediate effect, the defendant be granted leave to levy distress for the rent, water and electricity bills arrears and the defendant be awarded costs of the proceedings.

Analysis and Determination

17. I have given full consideration to both parties' pleadings as filed, the Respondent's written submissions together with the authorities cited. Before I go into the merits of the suit, I wish to state that since the jurisdiction of this Tribunal was not contested by the parties herein, the same is considered in the affirmative.
18. In my respectful view, I find that the issues for determination are;
 - Whether the landlady granted the tenant adequate notice; and
 - Whether the tenant should grant vacant possession.

I shall proceed to consider and determine the same below:

Whether the Landlady Granted the Tenant Adequate Notice

19. It is trite law that the termination of an agreement, can be by a way of a notice. It is however more important to note that, the said notice must be made properly. The [Rent Restrictions Act](#), cap 296 under Section 15 provides that: "Where notice to quit is required to be given in respect of premises it shall be in writing, and where the required period of notice is not elsewhere specified in this Act it shall be not less than one month's notice ending at the end of a tenancy month."
20. It is the tenant's case that the Landlady did not give her adequate notice to vacate. She stated that she received a call from the landlady on 1/12/2022 informing her to vacate the suit premises before 5/12/2022. On the other hand the landlady has submitted to the court that she issued the tenant with a notice which was to take effect on 25/8/2022. The respondent submitted that the notice was extended to December 2022 upon request by the Tenant in order to enable her secure an alternative accommodation. The Tenant has neither disputed the fact that she was granted the notice to vacate that was to take effect on 25/8/2022 nor that she requested an extension of the same notice.
21. The applicant has not demonstrated that the respondent violated any law by being given a notice to vacate the house and there is sufficient evidence to show that she had been given sufficient, notice to vacate the premises from 25/8/2022.
22. The tenant has had adequate time to seek alternative accommodation since the time that the initial notice was given to her by the Landlady. The landlady has proven that she afforded the tenant adequate and reasonable notice that is in accordance with the law. On this issue, I therefore find the notice issued



by the Respondent to the tenant conforms with the requirements of Section 15 of Cap 296 and is therefore legal and valid.

Whether the Tenant should grant vacant possession

23. The respondent has demonstrated to the tribunal that she granted the tenant with an adequate notice to vacate nevertheless, the tenant has been adamant to move out. Both parties are in agreement that the suit premises is currently in dire need of repair and it would be just that the tenant vacates to pave way for the same. The respondent has also submitted with the court a sale agreement of the suit premises which has since been sold to a third party. The Respondent submitted that she entered in the agreement with the knowledge that the tenant would have granted vacant possession by December 2022. It would be in the interest of justice that the tenant grants vacant possession to enable the Respondent meet her end of the bargain.

Determination

24. In the premises, I make the following final orders in respect of the suit:-
25. The Respondent is hereby allowed to levy distress for rent for the rent arrears of ksh 161,000 / =, water bill ksh 17,589 and electricity bill ksh 24,500 and obtain vacant possession of the suit premises.
26. The applicant to bear costs of the suit.

Orders accordingly.

JUDGEMENT DELIVERED AND ISSUED IN CHAMBERS IN ACCORDANCE WITH THE COVID 19 PRACTICE RULES THIS 25TH DAY OF MAY 2023 IN THE ABSENCE OF BOTH PARTIES.

Certified copies to issue to parties accordingly.

SIGNED

HILLARY K KORIR

CHAIRMAN

RENT RESTRICTION TRIBUNAL

