



**Muthengi v Choice Leather Works Limited & another (Tribunal Case
1269 of 2020) [2023] KERRT 1178 (KLR) (30 November 2023) (Judgment)**

Neutral citation: [2023] KERRT 1178 (KLR)

**REPUBLIC OF KENYA
IN THE RENT RESTRICTION TRIBUNAL
TRIBUNAL CASE 1269 OF 2020
HK KORIR, CHAIR
NOVEMBER 30, 2023**

BETWEEN

JOY MWENDE MUTHENGI PLAINTIFF

AND

CHOICE LEATHER WORKS LIMITED 1ST DEFENDANT

BLUE HILLS ESTATE MANAGERS 2ND DEFENDANT

JUDGMENT

Dispute Background

1. Through a plaint dated 27th August 2020 and a Notice of Motion Application dated 27th August 2020, the Plaintiff herein approached this Tribunal seeking for a temporary injunction against the defendants requiring that they deposit the rent deposit sum of Kshs. 124,000/= with the Tribunal's account pending the hearing and determination of the suit.

The Plaintiff's Case

2. The Plaintiff's Notice of Motion Application dated 27th August 2020 above mentioned is supported by various grounds being that the applicant was a tenant at Apartment 2C Choice Suites, Langata having entered into a tenancy agreement on 18/11/2016 and that was terminated as per the provisions of the agreement on 31/05/2020. She stated that 2nd Respondent managed the premises as an agent of the 1st Respondent and he collected all payments of rent and service charge. She stated that she gave the Respondent a two months' notice to terminate the tenancy agreement and vacated around 31/05/2020. She stated that together with the agents of the 2nd Respondent, they inspected the premises and they pointed out repairs that needed to be carried out before they could refund the deposit. She stated that she carried out the repairs and paint work and handed over the premises to the 2nd Respondent as per the tenancy agreement.



3. The Application is supported by the affidavit sworn by Joy Mwendu, the Plaintiff on 27th August 2020 where she stated that after vacating she asked the 2nd Respondent to refund her deposit but they referred her to the 1st Respondent whom they claimed to be the landlord. She stated that she insisted on getting her refund from the 2nd Respondent because all along during the tenancy, she made her payments to it. She attached copies of payment receipts and marked them as “JMM2”. She stated that her advocate wrote a demand letter to the 2nd Respondent but they never responded. A copy of the letter was annexed and marked as “JMM3”.
4. The Plaintiff filed a Plaint dated 27th August 2020, where she stated that she paid a refundable security deposit equivalent to two months’ rent and service charge amounting to Kshs. 120,000/=. She stated that it was an express term of the tenancy that she should pay water and electricity metre deposits of Kshs. 1,500/= and Kshs. 3,000/= respectively which amounts are refundable. She stated that the 2nd defendant alleged that the rent deposit was utilized in carrying out repairs and repainting and thus purported to refund Kshs. 42,324= which the tenant declined.
5. The plaintiff filed a witness statement dated 27/08/2020 where she reiterated the facts in the pleadings.
6. The plaintiff filed an amended Plaint dated 15th December 2020 where she stated that some of the repairs that the defendants wanted done in the premises could not be blamed on the Plaintiff as they were fair wear and tear owing to the fact that the respondents sunk a borehole that supplies salty water to the unit and as such corrosion of some metallic elements cannot be attributed as the Plaintiff’s mistake.
7. The plaintiff conceded to owing the defendants utility bills comprising of electricity bill of Kshs. 21,280/= and water bill of Kshs. 4,946/= totaling to Kshs. 26,226/= but the reason she owed the same was because it was not brought to her attention as she ordinarily overpaid her utility bills over the period of her tenancy. The plaintiff prayed for orders that; the agreement for repairs pointed out by both the Plaintiff and Defendants on 06/06/2020 was final, the defendants’ unilateral decisions in inspecting and repairing the suit premises is unlawful and judgement in the liquidated sum of Kshs. 98,274/=.
8. Counsel for the Plaintiff filed a Reply to the Defendant’s Amended Statement of Defence dated 8th November 2022, where she stated that the allegations of extortion are absurd as it is the defendants who are holding her money and not the other way round. She stated that the actions necessitating the suit arose out of a tenancy relationship between the parties and that is why she did not concede that she is no longer a tenant.

The Defendants’ Case

9. A Replying Affidavit dated 2nd December 2020 sworn by John M. Ngure the Operations Manager of the 2nd Respondent was filed. He stated that the tenant’s claim that the Respondents’ took a large chunk of the deposit is falsehood aimed at misrepresenting facts. He stated that the tenant contravened Clause 2(a) of the Tenancy Agreement by leaving the premises in a state that was not tenable. A copy of the Tenancy Agreement was annexed and marked as “JMN1”.
10. He stated that the tenant was informed that repairs would be conducted by the 1st Respondent and was furnished with a letter dated 16th June 2020 to that effect accompanied with the assessment for the required repairs to be made. The documents were annexed and marked as “JMN2”. He stated that there was an attempt to refund the amount that was rightfully owed to her vide cheque number SB000527 which was drawn in her name but it was declined. A copy of the cheque dated 5th August 2020 was annexed and marked as “JMN3”. He stated that a forwarding letter dated 10th August 2020 had been



drafted and addressed to her advocates for acknowledgement of receipt of the cheque. A copy of the letter was annexed and marked as “JMN4”

11. He stated that the plaintiff was given documents detailing breakdown of the repainting and repair work done by Webworks Solutions and the water and electricity bill arrears. A copy of the document was annexed and marked as “JMN5”. He stated that the plaintiff did not approach the tribunal with clean hands and the application was a waste of the Tribunal’s time. He stated that the tenant should move the Chief Magistrate Court under the Civil Division to claim any damages or money owed to her if her claim is valid. He stated that the applicant is no longer a tenant as she moved out more than six months ago.
12. Counsel for the defendants filed a Statement of Defence dated 22nd December 2021, where he stated that the prayers sought in the Amended Plaint are an abuse of the tribunal’s powers and that she should move the appropriate court as she is no longer a tenant.
13. A witness statement dated 23rd February 2022 by John M. Ngure the Operation Manager of the 2nd Defendant was filed where he reiterated the facts in the pleadings.

Submissions

14. On 22/08/2023 the suit proceeded for hearing physically and the parties were directed to file and serve written submissions which the parties verily did. I shall proceed to consider the same.

Plaintiff’s Submissions

15. Counsel for the Plaintiff filed written submissions dated 15th September 2023 where he stated that Part (e) of the tenancy agreement exempts the tenant from paying for fair wear and tear. He stated that the tenant was to meet the repairs to the extent of her contribution to the deterioration and not on account of natural factors that caused wear and tear.
16. Counsel presented the tribunal with three issues for determination being:
 - a. Whether the Plaintiff/Tenant is entitled to a refund of her deposit and if so, how much;
 - b. Whether the defendants’ second repairs on the subject house are tenable and should be borne by the tenant/plaintiff; and
 - c. Who should bear the costs of this suit.
17. On whether the Plaintiff/Tenant is entitled to a refund of her deposit and if so, how much, Counsel relied on the case *Jordana Waceera v Kiama Muturi* [2021] eKLR where the tribunal held that:

“The rent security deposit is intended to ensure that in the event the tenant fails in his/her obligation under a tenancy/lease agreement the same is applied to do so.”
18. Counsel stated that the Kshs. 42,324/= that the Defendants do not dispute should be carted away to the Plaintiff. He stated that what is contested is Kshs. 55,950/= which the defendants allege to have been incurred in repairs. He stated that a joint inspection was done on 06/06/2020 and repairs were done with the knowledge and supervision of the 2nd defendant and that if the repairs were poor-quality, he should have raised the issue at that point. He stated that there is no yard stick that was used by the defendants and proved before the tribunal that the defendants used to discredit the plaintiff’s repairs as poor-quality.



19. Counsel relied on Section 107 (1) of the *Evidence Act* which states that;

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
20. Counsel stated that the Doctrine of Acquiescence bars the defendants from denying the legitimacy of the repairs undertaken by the Plaintiff as they were actively involved in the whole process. Counsel stated that the defendants did not provide proof of the state of the house prior to the entry of the Plaintiff in 2016 vis-à-vis when she vacated in 2020. Counsel relied on the case of *Saul Sewe Ochieng Nyamogo v Kijos Holdings Limited* [2018] eKLR, where the court held that:

“In the circumstances, it can be inferred that the Respondent may have carried out those repairs to improve the value of its residential premises beyond the condition it was before the Appellant took occupation. Consequently, those expenses cannot be attributed to the Appellant.”
21. Counsel stated that there is a likelihood that the defendants undertook second repair works to improve the house’s appeal beyond that which it was in 2016 at the Plaintiff’s expense.
22. On whether the defendants’ second repairs on the subject house are tenable and should be borne by the tenant/plaintiff, counsel stated that in the existence of a security deposit, a tenancy agreement subsists until when the landlord inspects the premises and repairs are carried out to restore the house to the prior state. Counsel stated that a landlord should not undertake repair works on his property then have it borne by his former tenant.
23. On who should bear the costs of this suit counsel stated that the tribunal should adopt the age old dicta that costs follow the event.

Defendants’ Submissions

24. Counsel for the defendant filed written submissions dated 5th October 2023 where she stated that it was the defendant’s testimony that when the Plaintiff was vacating the premises there was an argument on the repairs that needed to be done but were not agreed upon due to the hostile environment that was created by the Plaintiff. Counsel stated that the repairs were not as a result of fair tear and wear but were as a result of the Plaintiff’s willful acts and negligence. She stated that the Tenancy Agreement was clear on carrying out repairs upon termination of the Agreement and that the purported repairs were sub-standard.
25. Counsel stated that the plaintiff failed to perform some requirements under the Tenancy Agreement. Counsel listed some items that were allegedly left in a sub-standard condition. She stated that the defendant was compelled to undertake repairs which ought to have been done by the Plaintiff after she did a sub-standard job. Counsel stated that the Plaintiff did not provide any counter valuation to show that the values ascribed in the quotation are either exaggerated or improper.

Analysis and Determination

26. I have given full consideration to both parties’ pleadings as filed, the written submissions together with the authorities cited.
27. In my respectful view, I find that the issue for determination is;

Whether the Defendants should refund the Plaintiff’s rent deposit.



28. I shall proceed to consider and determine the same below:

Whether the Defendants should refund the Plaintiff's rent deposit.

29. On the issue of rent deposit, I need to clarify that the rent security deposit is intended to ensure that in the event the tenant fails in his/her tenancy obligations under a tenancy/lease agreement the same is applied to do so. In Nairobi ELC Appeal 45 of 2019, *Halfan Mkiwa v Professor Philip Nyinguro*, it was stated that:

“Rent deposits are ordinarily paid as a security to the Landlord to be used in case of arrears or for repairs for damage to the premises. It is usually refundable provided the tenant settles all outstanding bills, rent arrears and leaves the premises in the condition it was in at the time he moved in.”

30. If the threshold set in the above case is what to go by, then we should proceed accordingly. It is not contested that the Plaintiff paid a rent security deposit of Kshs. 120,000/= while moving into the premises. It was also not contested that the Plaintiff was not in any rent arrears at the time of vacating. However, the Plaintiff admitted to being in arrears of utility bills comprising of electricity bill of Kshs. 21,280/= and water bill of Kshs. 4,946/= totaling to Kshs. 26,226/=. The sum of Kshs, 26,226/= therefore should be carted away to the defendants as it is rightfully owed to them.

31. The parties admitted that there was an initial joint inspection of the premises after which the Plaintiff undertook the repairs. The defendants stated that the repairs were sub-standard and that they had to additional repairs. A Post Tenancy Inspection was filed by the defendants, the report was never challenged by the Plaintiff. I have perused the report and none of the items needing repair listed was as a result of fair wear and tear. I therefore find that the defendants were justified to deduct the amounts sought.

Determination

32. In the premises, I make the following final orders in respect of this suit:-

- i. The Defendants shall refund the undisputed amount of Kshs. 42,324/=.
- ii. The Defendants shall bear the costs of the suit.

Orders accordingly.

Right of appeal to lie as provided for under Cap 296.

JUDGEMENT DELIVERED THIS 30TH DAY OF NOVEMBER 2023 IN OPEN COURT.

Certified copies to issue to parties accordingly.

SIGNED

HILLARY K. KORIR

CHAIRMAN

RENT RESTRICTION TRIBUNAL

NAIROBI

