



REPUBLIC OF KENYA



KENYA LAW
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**Nsimire v Gikonyo (Tribunal Case E815 of 2022)
[2023] KERRT 1181 (KLR) (5 May 2023) (Ruling)**

Neutral citation: [2023] KERRT 1181 (KLR)

**REPUBLIC OF KENYA
IN THE RENT RESTRICTION TRIBUNAL
TRIBUNAL CASE E815 OF 2022
JK IKINGI, VICE CHAIR
MAY 5, 2023**

BETWEEN

PAY PAY NSIMIRE PLAINTIFF

AND

HILLARY GIKONYO RESPONDENT

RULING

1. By a way of plaint dated 10/6/2022, the Plaintiff/Tenant instituted the proceedings herein seeking refund of house deposit, interest and legal fees of Kshs. 50,000/=.
2. It is the Plaintiff's/Tenant's case that on 4th May, 2016 she entered into the tenancy agreement with the Defendant/Respondent in the following verbatim terms:-
 - a. Monthly sum of Kshs. 56,000/=.
 - b. A sum of Kshs. 1000/= water bills to be paid monthly.
 - c. The Plaintiff/Tenant was to deposit a sum of Kshs. 65000/= as deposit.
 - d. The rent was to be paid on or before 5th day of the month.
3. For the reason of the above terms, the Plaintiff/Tenant on 22/4/2016 deposited a sum of Kshs. 65,000/= as a deposit of rent and continued to fulfill her obligation as per the tenancy agreement.
4. The Plaintiff/Tenant further averred that on or about August 2019, she intended to vacate the suit premises and as such issued the Defendant/Respondent with the termination notice. However, the Defendant/Respondent breached the tenancy agreement by refusing to refund the Plaintiff/Tenant deposit as agreed. That despite various demand letters, the Defendant/Respondent refused to refund the deposit aforesaid prompting institution of proceeding herein.



5. In response to the Plaintiff's/Tenant's claim, the Defendant/Respondent filed a statement of defence dated 17/10/2022 inter alia. He averred that the Plaintiff/Tenant was her tenant since 2016 and being a Congolese national, she used to leave the country especially in December and would always request him to look after the suit premises while she was away.
6. The Defendant/Respondent averred that it was around October, 2019 when he noticed that the suit premises was vacant prompting him to call the Plaintiff/Tenant and upon enquiring from her, she informed him that she had moved out.
7. The Defendant/Respondent further submitted that later on, the Plaintiff/Tenant served him with the court documents which indicated that she had sued him for failure to refund the deposit aforesaid yet the Plaintiff/Tenant had his phone number and was paying rent to him directly.
8. According to the Defendant/Respondent, the Plaintiff/Tenant never served him with any termination notice and neither did she inform him that she was vacating the suit premises.

Analysis and Determination-

13. I have considered the pleading of the parties, Defendant/Respondent's written submission and the law. The issues for determination are:-
 - a. Whether the Defendant/Respondent was served with the termination notice.
 - b. Whether the Plaintiff/Tenant is entitled to reliefs sought.

Whether the Defendant/Respondent was served with the termination notice.

14. The Plaintiff/Tenant averred that on about August 2019, she intended to vacate the premises and issued the Defendant/Respondent with termination notice vide plaint dated 10th June 2022. There being an intention to vacate, the Plaintiff/Tenant is not specific on the dates she vacated the premises and it is not clear whether the issuance of termination notice took effect immediately or later. Conversely, the Defendant/Respondent in the statement of defence filed on 17/10/2022 stated that he noted that the suit premises was vacant around October 2019 and upon calling the Plaintiff/Tenant, she informed him that she had moved out.
15. According to the Defendant/Respondent, the Plaintiff/Tenant did not serve him with any notice to vacate or inform him that she was vacating the premises yet she had his phone number and was paying rent directly to the Defendant/Respondent. It is noted that the Plaintiff/Tenant did not file any reply to defence to rebut the Defendant/Respondent's allegation. Further; the Plaintiff/Tenant did not file a copy of termination notice to afford the Tribunal the opportunity to prove the facts under investigation. One cannot just make statement and expect the same to be accepted. There is need to give robust evidence to justify the facts being alleged. I am therefore persuaded that the Defendant/Respondent was not served with a termination notice.

Whether the Plaintiff/Tenant is entitled to relief sought.

16. Although the Plaintiff/Tenant filed the claim herein, the same is not substantiated as no documentation has been tendered in support of the said claim. Such important documents like tenancy agreement and demand letter mentioned by the Plaintiff/Tenant were not filed and the same has denied the Tribunal the opportunity to assess the authenticity of the Plaintiff/Tenant's claim.



17. Section 107 of [evidence Act](#) places the burden of proof on party alleging the existence of a fact. The Plaintiff/Tenant has therefore failed to discharge her duty as imposed by statute. Secondly, there is no indication that the Plaintiff/Tenant requested for joint inspection at the time of vacating the premises.
18. The tenant is obligated under section 26 of the [rent restriction Act](#) to maintain and keep the premises in a state in that which the premises were at the commencement of tenancy. This therefore requires the landlord to hold security deposit as a guarantee that tenant will pay their bills and keep the rental units in good condition. It is imperative therefore, for the parties to hold a joint inspection of the premises at the beginning of the lease period and at the end of the tenancy period to enable the parties assess the condition of the premises at the beginning and the end of lease period in order to determine who is liable for any repair and damages to the premises.
19. In the present case, the Plaintiff/Tenant vacated the premises before this important process could take effect yet deposit is refundable based on the outcome of the assessment of the premises. Logically, the Plaintiff/Tenant ought to have engaged the landlord on the issue of inspection in order to recover her deposit if any. I therefore hold the view that the process of joint inspection having not been carried out, the Defendant/Respondent would not have been in a position to know how much deposit he needed to refund.
20. In view of the foregoing, the application dated June 10, 2022 is hereby dismissed and parties are to bear their own costs.

RULING DELIVERED AND ISSUED IN CHAMBERS IN THE ABSENCE OF BOTH PARTIES ON THIS 5TH DAY OF MAY 2023 IN ACCORDANCE WITH THE COVID 19 PRACTICE REGULATIONS.

SIGNED

J. K. IKINGI - DEPUTY CHAIRMAN

RENT RESTRICTION TRIBUNAL

NAIROBI

