



**Nderitu v Otieno (Tribunal Case E079 of 2023)
[2023] KERRT 1185 (KLR) (13 December 2023) (Judgment)**

Neutral citation: [2023] KERRT 1185 (KLR)

**REPUBLIC OF KENYA
IN THE RENT RESTRICTION TRIBUNAL
TRIBUNAL CASE E079 OF 2023
HK KORIR, CHAIR
DECEMBER 13, 2023**

BETWEEN

ROSEMARY NYAWIRA NDERITU PLAINTIFF

AND

SELPHIN OTIENO DEFENDANT

JUDGMENT

Dispute Background

1. Through a plaint dated 20th January 2023 and a Notice of Motion Application dated 20th January 2023, the Plaintiff herein approached this Tribunal seeking for orders for vacant possession and costs.

The Applicants Case

2. The Plaintiff's Notice of Motion Application above mentioned is supported by various grounds being that the tenant has been difficult to handle due to his arrogant behaviour, that the defendant has been evasive and uncooperative when rent is demanded from him, that the Plaintiff needs to renovate the suit premises for other uses and that the tenant was issued with a sufficient notice to vacate commencing 10th October 2022 to 1st January 2023.
3. The Application is supported by the affidavit sworn by the Plaintiff on 20th January 2023. In the said affidavit the plaintiff states that the monthly rent payable is Kshs. 3,000/= . She stated that she issued the tenant with a notice to vacate commencing on 10th October 2022 to 1st January 2023. She stated that she was struggling to cater for the expenses of the suit premises as there was no rent that was forthcoming as she had waived rent for the notice period. She stated that as law abiding citizen she could not evict the tenant and there implored the tribunal to grant the orders sought.



The Plaintiff filed a Plaintiff dated 20th January 2023 where she reiterated the facts in the pleadings.

4. A Witness Statement by Roda Tinyari Marete a neighbour to the tenant was filed. She stated that the defendant has been rude and often arrogant towards the Landlady and uses improper speech while addressing the Landlady. She stated that they share a token which they are obliged to contribute towards but the defendant has been difficult forcing her to deny him the use of it until he contributes. She stated that due to the foregoing, the defendant threatened to cause serious harm to her which she reported to the landlady who advised that they report to the Police which they did. She requested the Tribunal to help the Landlady through the best way it can.

The Defendants Case

5. Learned Counsel for the defendant filed a defence and counterclaim dated 8th February 2023. Counsel stated that the Plaintiff had fully paid rent and was abiding to the set rules and regulations. Counsel stated that the defendant has on several occasions harassed the tenant to an extent that he did not enjoy quiet occupation. She stated that the tenant peacefully coexisted with his neighbours while paying rent on time and therefore should be accorded peaceful occupation. Counsel prayed that the Landlord's suit be dismissed with costs and that the tribunal grants an order for peaceful and quiet occupation.
6. The Defendant filed a Witness statement dated 16th August 2023 where he stated that the Landlady issued her with a notice to vacate which notice he protested as the grounds were baseless and untrue. He stated that he leaves for work early in the morning and goes back late at night therefore he is not a nuisance to his neighbours as alleged by the witnesses. He stated that the witnesses colluded with the Landlord so that they can throw him out of the premises.
7. He stated that the Landlady did not adduce any tangible evidence and grounds to warrant his eviction. He stated that relocating is an expensive exercise and he therefore requires time to make plans before he can make any decision on vacating. He stated that the rent payable exceeds the mandate of the tribunal and the tribunal should determine whether it has jurisdiction. He stated that the landlady's suit lacks merit and should be dismissed with costs and he is allowed peaceful occupation without any interference.

Submissions

8. 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

9. Counsel for the Plaintiff filed written submissions dated 4th October 2023 where he presented the tribunal with three issues for determination being:
 - a. Did the Plaintiff/Landlady issue a legal Notice to vacate;
 - b. Whether the Defendant/Tenant should give vacant possession to the Plaintiff/Landlady; and
 - c. Who should bear the costs of the suit.
10. On whether the Landlady issued a legal notice to vacate, counsel stated that a tenancy agreement that is not reduced down into writing is regulated by Cap 296 since they are controlled tenancy which are equally provided for under Section 57 of the [Land Act](#) which states that:

“(1) If in any lease—



- (a) the term of the lease is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease shall be deemed to be a periodic lease.”

Additionally, Counsel relied on Section 15 of Cap 296 which states that:

“ 15. 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.”

11. Counsel stated that the notice given complies with the threshold set out in Section 15 of Cap 296 and it gave the Respondent three months to vacate which he did not comply with. Counsel stated that the Respondent did not challenge the notice and instead of surrendering vacant possession, he resorted to threats and intimidation. Counsel stated that the notice was effective and enforceable and that the tribunal should uphold it.
12. On whether the Defendant/Tenant should give vacant possession to the Plaintiff/Landlady counsel stated that since the landlady issued a legal notice to vacate which expired on 1st January 2023 the tenant should render vacant possession. Counsel stated that the tribunal has powers under Section 5 of Cap 296 to order for the same. It states that:
- “ 5. The tribunal shall have power to do all things it is required or empowered to do by or under the provisions of this Act, and in particular shall have power –
- (1) subject to the provisions of section 14, to make either or both of the following orders -
- (i) an order for the recovery of possession of premises whether in the occupation of a tenant or of any other person.”
13. Counsel invited the tribunal to consider the testimonies of PW2 and PW3 who testified that their quiet occupation was being disrupted by the conduct of the defendant as a result of his verbal abuse meted towards the Plaintiff and themselves and also his lack of cooperation in contributing for the tokens.
14. On who should bear the costs of the suit counsel stated that the Respondent necessitated this cause and that while the Landlady was acting alone, the respondent hired the services of an advocate. He stated that the Landlady was forced to seek services of a counsel and therefore she should be awarded the costs of the suit. Counsel invited the Tribunal to assess the costs at Kshs. 45,000/= and that the same be paid within one month from the date of Judgement failure of which the Plaintiff should be allowed to legally execute.



15. While concluding his submissions, learned counsel relied on the case of *Kasturi Limited v Nyeri Wholesalers Limited* (2014) eKLR where the court stated that:

“It is the duty of the courts to ensure that no individual is prevented from taking possession and or enjoying their property. A tenant cannot impose or force him/herself/itself on a Landlord.”

The Defendants Submissions

16. Learned Counsel for the Defendant filed written submissions dated 9th October 2023. Counsel stated that the Complaint and Verifying Affidavit filed by the Landlady are unsigned and therefore they are inadmissible in court and that the court should exercise its discretion on the veracity of the said documents.

17. Counsel stated that the tenant was never served with the notice that was to take effect on 1st January 2023 but was only served with the notice dated 1st December 2022. She stated that the tenant objected to the said notice when the Landlady began harassing him to vacate despite him complaining that the notice was too short. She stated that when the Landlady testified, she did not mention the need to conduct renovation and if that was the case, the notice contravenes the provision of Section 14(1)(i) of Cap 296 which states that:

“ 14. No order for the recovery of possession of any premises or for the ejectment of
(1) a tenant therefrom shall be made unless -
(i) the landlord requires possession of the premises to enable the reconstruction or rebuilding thereof to be carried out, and has given to the tenant not less than six months’ written notice of that requirement; in which case the tribunal shall include in any order for possession a requirement that the reconstruction or rebuilding shall be completed within such specified time as the tribunal may consider reasonable.”

18. Counsel stated that the Landlady did not submit any evidence in terms of approval from the City Council of the intended repairs. Counsel stated that during the hearing it was confirmed that the tenant was not in any arrears and that the Landlady failed to prove that the tenant has been making inconsistent payment. Counsel urged the tribunal to disregard the testimony of the two witnesses in regard with the tenant being a nuisance because the witnesses colluded with the Landlady to give false evidence to warrant his eviction.

19. Counsel stated that on the Landlady’s notice to vacate dated 10th October 2023, she failed to comply with provisions of *Section 107 of the Evidence Act* which provides that:

“(1) 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.
(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

20. Counsel prayed that the Complaint be dismissed with costs and the tenant’s Defence and Counterclaim be allowed with costs to the tenant.



Analysis and Determination

21. I have given full consideration to both parties' pleadings as filed, the written submissions together with the authorities cited.
22. In my respectful view, I find that the two issues for determination are;
 - a. Whether the Tribunal has Jurisdiction to hear and determine this suit; and
 - b. Whether the Tenant should grant vacant possession of the suit premises.
23. I shall proceed to consider and determine the same below:
 - a. Whether the Tribunal has Jurisdiction to hear and determine this suit.
24. The tenant in his pleadings stated that the rent payable which is KShs. 3,000/= exceeds the Jurisdiction of the tribunal. The Pecuniary Jurisdiction of the Tribunal is dictated under *Section 2 (1) (c) of Cap 296* as follows:

- “2. This Act shall apply to all dwelling-houses, other than –
 - (1) (c) dwelling-houses which have a standard rent exceeding two thousand five hundred shillings per month, furnished or unfurnished.”

Standard rent is defined under Cap 296 as follows:

“standard rent” means -

- (a) in relation to an unfurnished dwelling-house -
 - (i) if on the 1st January, 1981, it was let unfurnished, the rent at which it was lawfully so let, the landlord paying all outgoings;
 - (iii) if on the 1st January, 1981, it was not let, or not erected, or the tribunal is unable to determine whether or not it was on that date let or erected, a rent to be assessed by the tribunal at a monthly rate of not less than one and one-quarter and not more than one and one-half per cent of the cost of construction and the market value of the land,



the landlord paying all
outgoings;”

25. For the Tribunal to rule on whether it has jurisdiction or not, the standard rent of the premises has to be assessed. The assessment can be done by the tribunal on its own motion or on the application of either of the parties. Neither of the parties applied for the assessment of rent of the suit premises and therefore the standard rent is unknown. For that reason, I cannot hold that this tribunal lacks the jurisdiction to determine this suit. A similar position was held by the ELC while sitting at Mombasa, in its decision in *James Kirugi v The Chairman Rent Restriction Tribunal JR (2020)* where it stated that:

“Now, I need to make clear that “standard rent” as used in the act is not the actual amount of money. Thus when we say “standard rent” of KShs. 2,500/= it does not mean that this literally the sum of KShs. 2,500/=. It will be noted that “standard rent” has to be deduced or calculated. The ex parte applicant can only succeed in this application if he can tell this court what the “standard rent” for the premises is. As I have explained above, rent can be the sum of KShs. 15,000/= in the actual sense, but that does not mean that the “standard rent” is KShs. 15,000/=. The two are not always the same. The ex parte applicant has not presented before this court any material to demonstrate what the standard rent is. From what I can see, the ex parte applicant had filed a preliminary objection contesting the jurisdiction of the court, but he never appeared to argue it. He therefore never demonstrated to the Tribunal that the standard rent is beyond the jurisdiction of the tribunal. It is the same thing here. Though the ex parte applicant is loud in his argument that the Tribunal had no jurisdiction, he has not told me what the standard rent is, so that I can find that the subject matter was beyond the jurisdiction of the Tribunal.

26. I am afraid that I cannot hold that the Tribunal had no jurisdiction without evidence of what the standard rent is in this case. Given that position, this application must fail.”

b. Whether the Tenant should grant vacant possession of the suit premises.

27. Section 14 of Cap 296 provides for the grounds under which a tenant can be evicted. It states as follows:

14. Restriction on the right to possession

- (1) No order for the recovery of possession of any premises or the ejection of a tenant therefrom shall be made unless—
- (b) the tenant, or any person residing with him, has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the premises has, in the opinion of the tribunal, deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any such person;

28. During the hearing of the suit the Landlady and her two witnesses testified that the tenant has been a nuisance and often uses abusive language towards the landlady. It is important for tenants to exercise good neighbourly conduct to foster a peaceful living environment. The tribunal is satisfied that this conduct qualifies as a ground for granting vacant possession.

29. On the issue of notice, the landlady stated that she issued two notices one dated 1st December 2022 and the other dated 1st December 2022. The tenant denied to having received the first notice and admitted



to having received but objected to it due to the reasons that had been provided in it. Section 15 of Cap 296 provides for the procedure of granting notices it states as follows:

“ 15. 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:

Provided that the tribunal shall construe notices to quit liberally and without undue regard to technicalities.”

30. The tenant acknowledged to having received the second notice which was in writing and the only thing he challenged were the reasons set out in the notice. The tenant did not challenge the period of time that had been set out in that notice. I find that the notice was legal and enforceable in law.
31. The tenant challenged the notice by virtue of Section 14(1) (i) of Cap 296 which requires the landlord to issue a six months’ notice where he intends to undertake repairs or renovations to the suit premises. The tenant was issued with a notice dated 1st December 2022 which he acknowledged recipient, the tenant has had ample time to find alternative accommodation since then. The brain behind giving a six months’ notice is to accord the tenant enough time to find alternative accommodation and in the present case I find that the tenant has had enough time since 1st December 2022 to find alternative accommodation.
32. It is evident that the relationship between the tenant and the Landlady has irrevocably failed and it is therefore in the interest of peace that the tenant renders vacant possession. Additionally, the suit premises are a property of the Landlady and she retains the rights towards its use and ownership the tenant cannot insist on continuing with tenancy whereas the Landlady wants to make renovations to the suit premises. A similar holding was held in the case of *Kasturi Limited v Nyeri Wholesalers Limited (2014) eklr* where the court stated that:

“It is the duty of the courts to ensure that no individual is prevented from taking possession and or enjoying their property. A tenant cannot impose or force him/herself/itself on a Landlord.”
33. During the hearing the tenant prayed to be accorded time for him to vacate by January 2023. The tribunal shall grant this prayer.

Determination

1. In the premises, I make the following final orders in respect of this suit:-
 - i. The Tenant shall render vacant possession of the suit premises on or before 1st January 2023. In default execution to issue.
 - ii. The Tenant shall continue paying rent and utility bills at the agreed amount as and when they fall due.
 - iii. The Landlady shall grant the plaintiff peaceful occupation of the suit premises until delivery of vacant possession as above.
 - iv. Each party shall bear own costs of this suit.

Orders accordingly.



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

**JUDGEMENT DELIVERED IN CHAMBERS THIS 13TH DAY OF DECEMBER 2023 IN THE
ABSENCE OF BOTH PARTIES.**

Certified copies to issue to parties accordingly.

Signed

HILLARY K. KORIR - CHAIRMAN

RENT RESTRICTION TRIBUNAL

NAIROBI

