



REPUBLIC OF KENYA



KENYA LAW
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**Wairimu v Gorasia (Tribunal Case E575 of 2021)
[2023] KERRT 1186 (KLR) (9 November 2023) (Ruling)**

Neutral citation: [2023] KERRT 1186 (KLR)

**REPUBLIC OF KENYA
IN THE RENT RESTRICTION TRIBUNAL
TRIBUNAL CASE E575 OF 2021
HK KORIR, CHAIR
NOVEMBER 9, 2023**

BETWEEN

GRACE WAIRIMU PLAINTIFF

AND

RAMESHCHANDRA GOVIND GORASIA DEFENDANT

RULING

1. The plaintiff/ tenant prayed for and obtained orders dated 8th March 2023 to restrain the defendant, his servants, employees or / agents from increasing rent, evicting, harassing or in any way interfering with the plaintiff possession of the house number E3, Taj villas estate, Nairobi pending hearing and determination of the suit.
2. In the opposition the defendant/ applicant filled replying affidavit dated 28th July 2023 challenging the plaintiff's / respondent application dated July 21st 2023.
3. By consent by both parties' counsels' directions were given for the application to be canvassed by way of written submissions, which the defendant verily did.
4. The gist of the defendant/ respondent written submissions dated 4th September 2023 is that the plaintiff/ applicant does not want to pay rent with an increment of 5%, the plaintiff has stayed in the subject premises for 2 years without active lease agreement.
5. The lease agreement between the parties has expired and parties could no longer agree mutually on the renewal of the lease and defendant no longer wishes to rent his premises to the plaintiff herein.
6. Arising from the above its clear that the relationship between the Landlord and tenant is no longer good. As per article 40 of the Constitution 2010, landlord wishes to be granted vacant possession.



7. Article 40 provides that:

Protection of right to property

1. Subject to article 65, every person has the right, either individually or in association with others, to acquire and own property-
 - a. of any description; and
 - b. In any part of Kenya.
3. The state shall not deprive any person property of any description, or of any interest in, or right over, property of any description, unless the deprivation-
 - a. Results from an acquisition of land or an interest in land or a conviction of an interest in land, or title to land, in accordance with chapter 5; or
 - b. Is for a public purpose or in the public interest and is carried out in accordance with this constitution and any Act of parliament that-
 - a. Requires prompt payment in full, or just compensation to the person; and
 - b. Allows any person who has an interest in, or a right over, that property a right of access to the court of law.
8. The landlord has the right to own and manage their property, which includes the ability to regain possession for various reasons. However, this right is not unlimited, as the Constitution recognizes the need to balance the rights of property owners with their rights of individual occupying the property.
9. Section 14 of cap 296 provides the grounds of granting vacant possession of any premises.it states as follows;
 1. No order for the recovery of possession of any premises or for the ejectment of a tenant therefrom shall be made unless-
 - a. Some rent lawfully due from the tenant has not been paid, or some other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as it is consistent with the provisions of this Act has been broken or not performed; or
 - b. The tenant, or any person residing with him, has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers.

Determination

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



1. That the interim orders earlier granted are vacated and the plaintiff to deliver possession within 30 days
2. Each party to bear its own cost of the suit.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 9TH DAY of NOVEMBER 2023

HILLATY K. KORIR - CHAIRMAN

RENT RESTRICTION TRIBUNAL

NAIROBI

