



**Warari v Kinyanjui & another (Environment and Land Appeal  
1 of 2024) [2024] KEELC 5217 (KLR) (11 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5217 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL 1 OF 2024  
JA MOGENI, J  
JULY 11, 2024  
(FORMERLY HCCA CASE NO. E336 OF 2022)**

**BETWEEN**

**LAWRENCE WARARI ..... APPELLANT**

**AND**

**DANIEL KINYANJUI ..... 1<sup>ST</sup> RESPONDENT**

**PAULINE WANJIRU ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the ruling and or orders of Honorable Chairman Cyprian Mugambi  
Nguthari at Business Premises Rent Tribuna Orders given on the 25th April 2022)*

**JUDGMENT**

1. The Appellant is the Landlord of the Respondents, in their premises, located at Kawangware. The agreed monthly rent payable by the Appellant was Kshs.16,000/-. By notice to alter terms of tenancy dated 1/11/2021, the Appellant gave notice to the Respondent of its intention to increase rent for the premises from Kshs 16,000/- to Kshs 45,000/- per month for the reason that the rent the Respondent was currently paying was uneconomical in view of the prevailing market rate of the properties in the same region where the suit property is situated.
2. At the same time on 10/12/2021 after the expiry of the notice period, the Appellant issued a notice to terminate tenancy despite the Tribunal having dismissed the same notices to terminate and increase rent by its ruling on 10/12/2021 via case number E524 of 2021.
3. On 25/04/2022 the Honorable Chairman issued an order upholding the tenant's application allowing the tenant to continue with his business without interruption and restraining the LandLord from interfering with the tenant's quiet occupation of the suit premises.
4. Aggrieved by the ruling the Appellant appealed to this court on the following main grounds of appeal: -



1. That the learned Chairman of the Tribunal erred in law and fact in unconditionally allowing the Respondents herein to continue with his business without considering the material evidence produced by the Appellant.
2. That the learned Chairman of the Tribunal erred in law and fact by making a finding which was against the preponderance of evidence and the law by conclusively making final orders.
3. That the learned Chairman of the Tribunal erred in law and fact by blatantly prohibiting the appellant as the landlord from disposing and or dealing with the suit premises notwithstanding the poor condition of the premises and notice from the County Government.
5. He sought the following orders from the court:
  - a. That the Appeal be allowed and the Ruling given on 25/04/2022 by the Chairman of the Business Premises Rent Tribunal be set aside and the Appellant be allowed to renovate the premises.
  - b. That the Court be pleased to give any other Order as it may deem fit blatantly prohibiting the appellant as the Landlord from disposing and or dealing with the suit premises notwithstanding the poor condition of the premises and notice from the County Government.
6. On the 15/02/2024, the court directed the parties to file written submissions.
7. At the time of writing this judgment only the respondent had filed their submissions dated 26/02/2024 through their advocates Ms. David Okoyo Ondieki & Associates. They submitted that the appellant violated a court order that had been issued on 10/01/2022 restraining them from interfering with the tenant's business and issued a Notice to the Tenant stating that he required to undertake major renovations on the suit premises.
8. He submits that the Landlord Appellant stated that the Nairobi Metropolitan Urban department had directed him to paint the suit premises and therefore to undertake the exercise he required the tenant to vacate the business premises. In his submissions he relied on the case of *Manaver N. Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited* Civil Appeal No 203 of 1994 where he submitted that Section 4(1) of the *Landlord and Tenants (Shops, Hotels and Catering Establishments) Act*, Cap 301 (hereinafter the Act) required that the tenant should be given an option to agree or not to agree with the Landlord's notice in writing but this opportunity was not afforded the tenant. The Landlord simply issued an eviction notice.
9. He also referred to Section 7(1) f of the Act which addresses the conditions upon which tenancy can be taken over. For this he relied on the case of *Auto Engineering Ltd v M. Gonella & Co. Ltd* (1978) eKLR where the court gave meaning to the working in section 7(1) f and stated that to "demolish or reconstruct" did not mean to evict tenants.
10. It is his contention that the Landlord/Appellant allowed the tenant to improve the business premises after taking a loan and then he hiked the rent to Kshs 45,000 and then he issued a notice of eviction. That the issue of renovation was simply a pretext.
11. Having re-appraised and evaluated the evidence tendered both by the appellant and respondent, the learned Magistrate found for the respondent holding:

“Consequently, I will allow the Tenant's application in terms of prayers 3, 4, 5 and 6 of the application dated 7<sup>th</sup> January 2022”



## Analysis and Determination

12. The Appellant has filed the Appeal under Order 42 Rule 1. Now Order 42 rule (1) of Civil Procedure Rules provides the procedure and manner to plead issues which is by way of a memorandum of appeal to give an opportunity to the other party to be aware of the case in advance. Through the Appeal the appellant has asked this court to set aside the decision of the Chairman of the Tribunal.
13. The court identifies only one issue for determination which whether the court should set aside the decision made by the Chairman of the Tribunal and allow the appeal. the order and proceedings in the Tribunal, pending the intended appeal.
14. The applicant seeks to have the order of the Tribunal set aside stating that the Chairman erred in law and fact in arriving at the decision of allowing the tenant/respondent to continue running their business in the suit premises and restraining the Landlord from interfering with this occupation.
15. Setting aside of a regular decision, ruling and or judgment of a court involves the court discretion upon sufficient grounds. The Appeal does not disclose what I would consider to be sufficient grounds of setting aside the interlocutory order except that the appellant is unsatisfied with the findings of the Chairman of the Tribunal.
16. The Appellant before me does not claim that there was any concealment of any material facts which, if they had been brought before the Court before that decision was arrived at, the orders would not have been granted. Rather it is clear that the appellant is simply unhappy with the Orders made by this Chairman of the Tribunal and seeks with the very same facts earlier put before the Tribunal to get different results.
17. I have considered the pleadings, the submissions and the authorities proffered by the parties in support of their veritably incongruent assertions. As the principles enunciated by the authorities the parties have proffered have been fully elaborated upon in the parties' submissions. I do not find it necessary to regurgitate the authorities. They are all good authorities in their facts and circumstances. I have taken them into consideration when arriving at my determination in this appeal.
18. Also having carefully gone through the proceedings in the Tribunal and perused the pleadings filed by each party and also having perused the impugned ruling of the Chairman of the Tribunal, it is my finding that the learned Chairman considered all pertinent issues and on a balance of probability arrived at a well-reasoned ruling. In the circumstances, I enter judgment for the respondent against the appellant in the following terms:
  - a. Grounds 1 to 3 in the appeal are dismissed.
  - b. Costs shall follow the event and are awarded to the respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED THIS 11<sup>TH</sup> DAY OF JULY 2024**

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**MOGENI J**

**JUDGE**

In the presence of:

Mr. Ondieki for Respondents



Caroline Sagina - Court Assistant

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**MOGENI J**

**JUDGE**

