



**Padia v Kanyi (Environment & Land Case E007 of 2022)  
[2023] KEELC 15990 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 15990 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE E007 OF 2022**

**JO OLOLA, J  
MARCH 9, 2023**

**BETWEEN**

**RAJENDRA NANOO PADIA ..... PLAINTIFF**

**AND**

**PHILLIS WANJIKU KANYI ..... DEFENDANT**

**RULING**

1. By his plaint dated May 11, 2022 as amended on July 21, 2022, Rajendra Nanoo Padia (the plaintiff) prays for Judgment against the defendant for:
  - (a) An order of vacant possession of the premises demised to the defendant comprising of Title Number Nyeri Municipality Block 2/57 and in default the defendant be forcefully evicted from the premises by Hippo Auctioneers General Merchants;
  - (b) Mesne profits from May 1, 2022 at a rate of Kshs 84,125;
  - (c) Interest on (b) above at commercial rates;
  - (d) Costs of the suit; and
  - (e) Any other relief the Honourable court may deem fit to grant.
2. Those prayers arise from the plaintiff's contention that he is the sole proprietor of the building erected on the suit property and that he had leased the ground floor of the same to the defendant effective February 1, 2017. It is the plaintiff's case that the lease for 5 years and 3 months expired on April 30, 2022 but despite notice of non-extension of the lease, the defendant has failed to yield vacant possession of the premises.
3. But in her statement of defence dated June 15, 2022, Phyllis Wanjiku Kanyi (the defendant) avers that upon notice to vacate the premises being served upon her, she approached the plaintiff who assured



her to disregard the same and to continue paying rent as usual. The defendant further avers that the said notice to vacate had been given to her by the plaintiff's Advocate and that it did not emanate from the Business Premises Rent Tribunal as required by law.

4. The defendant further avers that there is a matter pending interpartes hearing before the Business Premises Rent Tribunal involving the two parties and urged the court to dismiss this suit with costs.
5. In addition to her statement of defence, the defendant has by a notice of preliminary objection dated June 15, 2022 sought to have the suit struck out with costs on the grounds:
  - (1) That the suit offends the mandatory provisions of the law in that the matters in question raised in the plaint ought to have been filed in the Business Premises Rent Tribunal as the issues raised revolve around the landlord – tenant relationship and not an Environment and Land Court matter as clearly reflected in the plaintiff's pleadings and as such, the same is a non-starter, incurable, bad in law and an abuse of the court process;
  - (2) That the suit and application are scandalous, frivolous or vexatious in that orders (that) are sought against Phylis Wanjiku Kanyi should be filed, heard and determined in the Business Premises Rent Tribunal and only the party dissatisfied with the award can move to the High Court for an appeal; and
  - (3) That the suit is incompetent as it is and therefore incapable of being defended as filed.
6. Following directions issued herein, it was agreed that the preliminary objection be disposed off by way of written submissions. I have accordingly perused the submissions and authorities placed before me by the learned advocates acting for the parties herein.
7. By the preliminary objection before the court, the defendant contends that this court has no jurisdiction to hear the dispute herein. It is the defendant's case that the dispute before the court emanates from the creation of a landlord – tenant relationship as the parties executed a tenancy agreement which expired on April 30, 2022.
8. The defendant asserts that despite the expiry of the tenancy period, she has continued to meet her obligations by paying rent promptly and without fail until recently when the landlord refunded the same. It is her case that the parties are in a controlled tenancy and that the matter falls within the jurisdiction of the Business Premises Rent Tribunal as established under the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, cap 301 of the Laws of Kenya.
9. As it were, section 2 of the said cap 301 defines a controlled tenancy to mean a tenancy of a shop, hotel or catering establishment:
  - (a) Which has not been reduced into writing; or
  - (b) Which has been reduced into writing and which-
    - (i) is for a period not exceeding five years; or
    - (ii) contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
    - (iii) relates to premises of a class specified under subsection (2) of this section;

Provided that no tenancy to which the government, the community or a local authority is a party, whether as landlord or tenant, shall be a controlled tenancy.”



10. In the matter before me, it was not in dispute that the tenancy agreement executed by the parties on May 1, 2014 did expire on April 30, 2022 and that since then there has been no agreement reduced into writing by the parties. According to the defendant, she has despite the expiry of the tenancy continued to meet her obligations as a tenant by promptly paying rent without fail to the plaintiff's agent until May 30, 2022 when the said agent refunded the same.
11. As it were, the defendant did not swear any affidavit herein and the averment that she was paying rent promptly after expiry of the tenancy is contained in paragraph 7 of her statement of defence filed herein on June 20, 2022 and in her witness statement filed in court the same day.
12. Filed contemporaneously with the statement of defence is a list of documents in which the defendant annexes receipts of various payments allegedly made to the plaintiff's agent – Messrs Hippo General Merchants. The last receipt annexed is dated April 11, 2022, some few days before the tenancy agreement expired.
13. It was however clear to me that after the expiry of the agreement on April 30, 2022, the said agent had not issued the defendant with any receipt for payment. Instead, the defendant has annexed a printed copy of an M-pesa payment of Kshs 48,000/- sent to an account at Family Bank on May 3, 2022.
14. It was clear to me that the only reason this payment was being forwarded to the said account was the fact that the agent had no authority to collect rent from the defendant. Indeed, that much is clear from the defendant's own annexures which feature a letter dated May 5, 2022 from the plaintiff's agent informing the defendant that the plaintiff had terminated the contract and that they were no longer allowed to collect rent from herself.
15. In the circumstances herein, there was no proof of any payment of rent that was accepted by the tenant. It is elementary learning that for there to be a contract, there has to be an acceptance of an offer on the same terms of the offer. That is not the case herein.
16. The dispute before this court is whether or not the defendant has a right to remain on the plaintiff's parcel of land LR No Nyeri Municipality Block 2/57 after the expiry of the tenancy agreement without the plaintiff's authority or consent. Under section 13 of the *Environment and Land Court Act* No 19 of 2011, this Court is clothed with the necessary jurisdiction to determine such a dispute.
17. It follows that I did not find any basis for the preliminary objection dated June 15, 2022. The same is dismissed with costs to the plaintiff.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI  
THIS 9TH DAY OF MARCH, 2023.**

In the presence of:

Mr Gori for the plaintiff

Mr Karanja for the defendant

Court assistant - Kendi

.....

**J O Olola**

**JUDGE**

