Takaful Insurance of Africa Limited v Kwanza Estates Limited & another (Environment and Land Appeal 014 of 2022) [2023] KEELC 18532 (KLR) (5 July 2023) (Judgment)

Neutral citation: [2023] KEELC 18532 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISII

ENVIRONMENT AND LAND APPEAL 014 OF 2022

M SILA, J

JULY 5, 2023

BETWEEN

TAKAFUL INSURANCE OF AFRICA LIMITED .... APPELLANT

AND

KWANZA ESTATES LIMITED .... 1ST RESPONDENT

MOCHA PLACE LIMTED .... 2ND RESPONDENT

JUDGMENT

1. The appellant was tenant in the premises Kisii Municipality/Block III/195 holding a six year lease from 1 July 2018. This lease was granted by the 2nd respondent, Mocha Place Limited, who were then the owners of the premises. Under the lease, a security deposit of Kshs 223, 440/= was made and rent was Kshs 74,480/= per month payable quarterly. After every two years, rent would be increased by 10%. The premises was charged to Housing Finance Company Limited (HFC Limited) who, through the chargee's statutory power of sale, sold it to the 1st respondent, Kwanza Estates Limited. Through a letter dated June 30, 2021, HFC Limited informed the tenants in the premises that the premises had been sold to the 2nd respondent, and thus with effect from July 1, 2021, they should be paying rent to the 2nd respondent. Now being landlord, the 2nd respondent wished to assert herself and started negotiating fresh lease agreements for the premises. She also demanded to be paid rent while the agreements were being negotiated. The appellant avers that on October 25, 2021, she paid Kshs 544,247.50/= to cover rent for six months, that is for the period July 1, 2021 to December 31, 2021.

2. There must have been some misunderstanding between her and the appellant, for on October 27, 2021, the 2nd respondent moved to lock the premises rented by the appellant. This prompted the appellant to file a reference by tenant to the Business Premises Rent Tribunal under section 12 (4) of the *Landlord*

and Tenant (Shops, Hotels and Catering Establishments) Act, cap 301, Laws of Kenya which reference was dated October 28, 2021. In the reference, the tenant sought the following orders:-

(a) That the former landlord/2nd respondent be ordered to refund rent security deposit of Kshs 223, 440/= to the tenant.

(b) That the honourable tribunal be pleased to order the landlord/1st respondent to remove all the locks placed on the doors leading to the tenant's business premises pending the hearing and determination of this reference.

(c) That the honourable tribunal be pleased to order the landlord/1st respondent to allow the tenant's customers, employees and/or agents free access to and from the tenant's business premises pending the hearing and determination of the reference.

(d) That a permanent injunction be granted against the landlord/1st respondent prohibiting him from interfering with tenant's business premises and quiet use and possession of the premises until the rent paid is fully utilized i.e until December 31, 2021.

(e) That without issuance of proper notice to vacate, the landlord be prohibited from evicting the tenant from the business premises pending the hearing and determination of the reference.

(f) That the new landlord be ordered to compensate the tenant general damages for loss of business and damage to the tenant's reputation.

(g) That an order do issue directing the OCS Kisii Police Station to ensure compliance of the orders issued by this tribunal.

(h) That costs of this reference be awarded to the tenant.

3. Contemporaneously with the above reference, the appellant filed an application dated October 28, 2021, seeking the following prayers (slightly paraphrased for brevity) :-

(a) Certification of urgency.

(b) That the former landlord (2nd respondent) be ordered to refund the rent security deposit of Kshs 223,440/= to the tenant.

(c) That the 1st respondent do remove all locks placed on the doors leading to the business premise of the appellant and allow them free access pending hearing and determination of the reference.

(d) That the landlord be ordered to allow the tenant's customers, employees and agents free access to and from the premises.

(e) That a permanent injunction be granted against the landlord/1st respondent prohibiting him from interfering with the business premises and possession by the tenant until the rent paid is fully utilized i.e until December 31, 2021.

(f) That without issuance of a proper notice to vacate the landlord be prohibited from evicting the tenant pending hearing and determination of the reference.

(g) That the new landlord be ordered to compensate the tenant general damages for loss of business and damage to the tenant's reputation.

(h) That an order do issue directing the OCS Kisii to ensure compliance with the orders of the tribunal.

(i) That costs of this reference be awarded to the tenant.

4. On October 29, 2021, the tribunal issued orders in terms of prayers (c) (d) and (h) above pending hearing of the application inter partes. It means that the landlord was to remove the locks, allow free ingress and egress, and the OCS Kisii was to ensure compliance with the said orders pending inter partes hearing of the application.

5. I have not seen any replying affidavit specifically addressing this application dated October 28, 2021.

6. Not too long after, the appellant made a decision to vacate the premises, and issued a notice dated November 4, 2021, that she was terminating the tenancy and would vacate the premises by December 31, 2021. The reason given was that she was relocating to new premises and the notice was said to be issued pursuant to section 4 (3) of cap 301. That notice was followed up by a letter of even date written by M/s Ben Gichana & Company Advocates on behalf of the appellant. Within that letter, it was specified that the tenant was giving a one month notice and will therefore vacate by December 31, 2021. It was mentioned that any pending issues regarding payment of deposit and return of premises to its previous state would be canvassed at the tribunal.

7. On December 22, 2021, the 1st respondent replied through her advocates, M/s Konosi & Company stating as follows :-

> " You served a notice to vacate on December 31, 2021. We are made to understand that you want to move out over the weekend. Please note that we expected you to have moved earlier so that you give enough time for the premises to be restored to their original state. In view of the above, we require you to pay a sum of Kshs 150,000/= being the estimated cost of restoring the premises before we allow you to move out of the premises. Urgently remit the said amount to our client's account whose details you have."

8. This demand for Kshs 150,000/= before the appellant could leave the premises shocked the appellant. She thought that the demand was completely unjustified and baseless, and said so in a reply dated December 22, 2021. Within that letter, the appellant averred that she has never made any renovations to the premises since moving into it. She pointed out that the 1st respondent had purchased the premises in the condition that it was at the time. She demanded that she be allowed to leave freely.

9. Well, it appears the 2nd respondent was adamant and refused to allow the appellant to move out without first being paid the sum of Kshs 150,000/=. This prompted the appellant to file a second application to the tribunal, that dated December 28, 2021, under certificate of urgency seeking the following prayers :-

(a) Certification of urgency.

(b) That the tribunal be pleased to order the 1st respondent to allow the tenant free and unconditional exit from the premises pending hearing and determination of the application.

(c) That the tribunal be pleased to make a declaration that the tenant is not liable to pay any money for restoration of the premises pending hearing and determination of the reference.

(d) That an order do issue directing the OCS Kisii Police Station to ensure compliance with the orders issued by the tribunal and provide security to the tenant.

(e) That the costs of the application be awarded to the tenant.

10. The matter was placed before the chairman of the tribunal who directed that it be placed before Hon P. May on January 3, 2022 for directions. What the tenant did thereafter was to use the earlier order issued on October 29, 2021, that allowed her free ingress and egress pending hearing of the reference, to vacate the premises.

11. The landlord replied to the application dated December 28, 2021 through a replying affidavit of Geoffrey Makana Asanyo sworn on December 31, 2021 and filed on the same day. There was also filed a preliminary objection dated December 31, 2021. That preliminary objection raised the following issues :-

(1) That the suit herein has been filed without authority from the applicant company.

(2) That there is no valid resolution of the applicant company approving the institution of the suit.

(3) That there is no valid resolution of the applicant company approving the appointment of Ben K. Gichana and Company Advocates to institute these proceedings for and on behalf of the applicant company.

(4) That there is no valid resolution of the applicant company authorizing Safiya Karua to swear the supporting affidavit on its behalf.

(5) That the complaint and applications are incurably defective, inept, incompetent and an abuse of the process of the court.

(6) That the application dated December 28, 2021 is seeking orders that are not based on the complaint filed.

12. A supplementary affidavit again sworn by Mr Asanyo on January 5, 2022 was subsequently filed. It was mentioned in that affidavit that on January 4, 2022, the 1st respondent's caretaker called Mr Asanyo and informed him that the tenant has exited the premises having obtained an order *ex parte* in Kisii CMCC miscellaneous application No 184 of 2021 allowing her to vacate the premises. It was averred that the order was obtained mischievously to defeat the cause of justice. Within this affidavit, the 1st respondent asked the tribunal to order the appellant to pay the sum of Kshs 423, 150.40/= made out as follows :-

(a) Rent for January, February and March – Kshs 259,190.40/=

(b) Security deposit – Kshs 140, 960/=

(c) Unpaid electricity bill – Kshs 23,000/=.

13. In response to this affidavit, the appellant filed an affidavit sworn on January 14, 2022 by Safiya Karua. She averred that the proceedings were competent and she annexed a resolution of the company. She

deposed that the appellant had sent the notice to terminate the tenancy on November 4, 2021 and that this was never challenged within one month as required by section 4 (5) of cap 301. On the restoration of the premises, she deposed that consideration must be given of the fact that the 1st respondent bought the premises as it is, and that the appellant did no renovation upon taking occupation in 2018. She deposed that the premises is in the same state as it was and there is no justification for the landlord to demand Kshs 150,000/= for restoration. She stated that the premises only require painting which at most will cost Kshs 30,000/=. On the demand for rent, for January, February and March, she deposed that this has no basis as the appellant moved out on January 3, 2021 and that it is apparent that the 1st respondent aimed to detain the appellant so as to force her to pay rent and extort money from her. On electricity, she deposed that there is no bill as they were using a token meter which is prepaid. She deposed that they vacated the premises in compliance with the orders issued on October 29, 2021 and that they sought police assistance, as the landlord denied them free access to and from the premises, after the landlord again locked it from December 29, 2021. She added that having issued notice to vacate, there was nothing barring the appellant from moving out of the premises.

14. Mr Asanyo swore a further supplementary affidavit on January 24, 2021 in response. He deposed that the board resolution attached is not a resolution as the company has 10 shareholders, 6 directors and one secretary. He also averred that the resolution annexed does not state when the meeting took place, who attended it, and the designation of the person who signed it. He contended that no notice in the prescribed form was served on the 1st respondent upon which the tenant would vacate the premises.

15. Parties were directed to file written submissions which they did and a consolidated ruling, addressing both applications dated October 28, 2021 and December 28, 2021 the preliminary objection, and I think the reference too, was delivered on June 10, 2022. In the ruling, the Honourable Vice Chairman of the tribunal, Hon P. May, narrowed down the matter into three issues, being :-

   (i) Whether the failure to file company resolution authorizing the institution of the present proceedings is fatal.

   (ii) Whether the landlord's prayer for rent payment and restoration of the demised premises is merited.

   (iii) Costs.

16. On the first issue, she did not find anything wrong with the filing of the suit and was of opinion that no material had been presented by the 1st respondent that the suit was not authorized.

17. On the claim for refund of rent security (against the 2nd respondent) she allowed it as she did not find it opposed. On the landlord's demands she held as follows :-

   > 12... The parties seem to concur that the tenant has a duty of undertaking repairs but they only disagree on the amounts payable. The landlord has made a demand for Kshs 150,000 whilst the tenant has only offered Kshs 30,000. None of the parties has tendered any expert evidence to prove the real costs of the repairs. In light of the prevailing inflation, I am convinced that the amount offered by the tenant may prove to be too little. The tenant shall therefore pay the sum of Kshs 150,000 directly to the 1st respondent for repairs.
   >
   > 13. The 1st respondent further made prayers for the payment of other monies by the tenant for breach of contract. The same include rent for the months of January to March and electricity bill. The tenant had an obligation to pay rent. I shall therefore order payment of Kshs 259, 190.40/= as rent for January, February and March.

14. On the issue of costs, the order that commends itself is for each party to bear their own costs.

15. In the end I shall make the following orders :

    (a) That the tenant shall within 7 days pay the costs of repair assessed at Kshs 150,000/= to the 1st respondent.

    (b) That the tenant shall pay the electricity bill of Kshs 23,000/= to the 1st respondent within 7 days from the date hereof.

    (c) The tenant shall pay costs of Kshs 25,000/= to the 1st respondent.

    (d) The tenant shall also pay Kshs 259,190/= to the 1st respondent being rent for January – March 2021.

    (e) The ruling settles the reference and there being no other issue pending for determination, shall mark this file as settled.

18. Aggrieved, the tenant filed this appeal citing the following grounds :-

    (1) That the learned Vice Chair erred in law and in fact by granting orders against the appellant in favour of the 1st respondent for payment of a sum of Kshs 457,190/= without the 1st respondent making an application for the orders to be granted.

    (2) That the learned Vice Chair erred in law and in fact by allowing prayers made in an affidavit filed in response to an application, an un-procedural and irregular manner of seeking for orders from the court.

    (3) That the learned Vice Chair erred in law and in fact by proceeding to determine applications and issuing orders when the landlord/tenant relationship between the parties had terminated and thus the tribunal no longer had jurisdiction to hear and determined the issues before it.

    (4) That the learned Vice Chair erred in law and fact by ordering the appellant to pay the 1st respondent Kshs 150,000/= being cost of repairs even after acknowledging that the said 1st respondent had not adduced any evidence to support the claim.

    (5) That the Hon Vice Chair erred in law and fact by allowing the appellant's prayer for refund of security deposit by the 2nd respondent to the appellant in the application dated October 28, 2021 but failed to include the award in the final orders granted by the tribunal.

    (6) That the learned Vice Chair erred in law and in fact by issuing orders that the appellant to pay the sum of Kshs 457,190/= within 7 days, a period which was unreasonably short in the circumstances.

    (7) That the learned Vice Chair erred in law and in fact by awarding costs to the 1st respondent yet the applications by the appellant against the respondent had not been dismissed.

19. The appeal was argued by way of written submissions. In his submissions, Mr Macharia, learned counsel for the appellant, submitted that the tribunal had no jurisdiction to make the orders as there was no longer a landlord/tenant relationship between the parties, given that the appellant had vacated the premises in December 2021, yet the ruling was delivered in June 2022. He submitted that the tribunal ceased to have jurisdiction from the time the appellant moved out of the premises. He relied on the cases of *Republic v The Chairman, Business Premises Rent Tribunal ex parte Velji Premchand Shah* [2012] eKLR and *Republic v Business Premises Rent Tribunal & another ex parte Davies Motors Corporation Limited* [2013] eKLR. He submitted that it was wrong for the tribunal to order the appellant to pay rent for a period that she was not in occupancy having vacated the premises. He also faulted the manner in which the 1st respondent made its prayers, i.e, through an affidavit. He submitted that the tribunal admitted that the 1st respondent had not provided evidence for the repairs and faulted the award of Kshs 150,000/=. He added that this was in the nature of special damages which needed to be specifically pleaded and proved.

20. On the part of the 1st respondent, Mr Konosi, learned counsel, submitted that the tribunal had the requisite powers to make the orders as the tenancy between the appellant and the 1st respondent was a controlled tenancy. He added that the exact date that the appellant moved out was unclear and this requires taking evidence. On the notice to vacate given by the appellant, he submitted that it violated section 4 (3) of cap 301, in that a two month notice was never given. His view was that since the appellant paid rent for the 3rd and 4th quarters of the year 2021, the rent was payable quarterly and the Vice Chair of the tribunal was correct in making an award for Kshs 259,190/= to cover the period January to March of 2021. He was also of opinion that the tribunal exercised its discretion properly in making the award of Kshs 150,000/= in repairs and saw no problem in the award for costs.

21. The 2nd respondent, Mocha Place Limited, did not participate in this appeal. I note that she also did not enter appearance before the tribunal nor participate in the applications therein.

22. I have considered all the above. I will start with the issue of jurisdiction. It is the contention of the appellant that the tribunal did not have jurisdiction on the basis that she had already moved out of the premises and no landlord/tenant relationship existed. I have looked at the authorities that counsel referred and other cases addressing this issue. In the case of *Pritam v Ratilal & another* [1972] EA 560, the defendants served the plaintiff, who was their tenant, with a notice terminating tenancy under section 4 of cap 301. The plaintiff did not contest the notice by filing a reference at the tribunal with the result that the tenancy came to an end. He however did not vacate the premises and the defendants filed a complaint in the tribunal seeking an order of possession of the premises. The tribunal issued the order. The plaintiff filed action in the High Court for a declaration that the tribunal had no jurisdiction. The High Court held that the plaintiff's tenancy had been properly terminated, and as the plaintiff ceased to be the defendants' tenant, no complaint could be made to the tribunal.

23. A similar result ensued in the case of *Republic v The Chairman, Business Premises Rent Tribunal ex parte Velji Premchand Shah*, Mombasa High Court, judicial review No 25 of 2012, (2012) eKLR. In the said suit, the interested party filed a reference at the tribunal complaining that the *ex parte* applicant, who was his landlord, had illegally locked up the premises, she denied having vacated the premises and considered the tenancy still subsisting. The position of the *ex parte* applicant was that she had moved to distress for rent, only to find the premises vacated by the interested party and she deemed the tenancy as terminated. The court in making a decision on the two contested factual position, accepted the contention of the ex parte applicant, that the interested party had terminated the lease and vacated the premises and there was no longer any landlord/tenant relationship. Thus, the tribunal could not have jurisdiction in the matter.

24. I think the position in our case is distinguishable from the above two cases, at least in so far as the claim against the 1st respondent, Kwanza Estates Limited is concerned. I will however need to hold that the reference, in so far as it was against Mocha Place Limited, was misplaced. In our instance, the reference to the tribunal was filed on October 28, 2021. At that time, Mocha Place Limited was no longer landlord, the landlord/tenant relationship having automatically terminated once the premises got a new owner. However, the relationship of landlord/tenant between the appellant and the 1st respondent, Kwanza Estates Limited, still subsisted.

25. Thus, as against the 1st respondent, I take the view that jurisdiction of the tribunal was properly invoked. If the landlord/tenant relationship exists at the time of filing the reference, then the tribunal would have jurisdiction. The relationship of landlord/tenant may of course end while the matter is still pending, but that would not automatically mean that the cause of action has stopped. There could still be an issue to be tried. For example, the tenant may have filed a reference to demand for some reimbursement of excess rent paid, but before the reference is heard and determined, he may opt to terminate the lease and thereby bring to an end the landlord/tenant relationship. That claim for reimbursement of excess rent would still remain alive before the tribunal as it occurred during the landlord/tenancy relationship and was filed when that relationship still existed. It does not mean that because the landlord/tenant relationship has lapsed, then the claim is overtaken; the cause of action would still remain live. Of course, there could be instances where some prayers are overtaken by the termination of the landlord/tenant relationship and the issue before court may be moot, but that is an issue for the tribunal to determine on a case by case basis. What is important in so far as jurisdiction is concerned, is that at the time the reference is filed, the landlord/tenant relationship subsists and in our case it did.

26. The appellant never moved to have the reference withdrawn, and in fact, the determination of the tribunal was on applications filed while the landlord/tenant relationship still subsisted between her and the 1st respondent. I therefore see no substance in the argument of the appellant that the tribunal did not have jurisdiction in the matter, at least in so far as orders were made in respect of the landlord/tenant relationship between her and the 1st respondent. Whether the tribunal invoked its jurisdiction appropriately is another matter all together which is what I now turn to.

27. It is important to map out exactly what was before the tribunal so as to determine whether the tribunal properly exercised its discretion and whether it made the appropriate orders in the circumstances. The dispute was presented to the tribunal by a tenant who filed a reference by tenant. That reference was said to be made under section 12 (4) of cap 301. That section of the law provides as follows :-

> (4) In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or tenant, and may make such order thereon as it deems fit.

28. The reference was against both Mocha Place Limited, the former owners of the property, and Kwanza Estates Limited, the new owners of the property. The complaints of the appellant were set out in the reference and the appellant sought a raft of orders which are contained in the reference and which I copied in paragraph 2 above. For ease of reference, the appellant sought an order for refund of the rent security deposit of Kshs 223, 440/= that it made to the 2nd respondent; an order for the 2nd respondent to remove padlocks placed by her and open the premises; an order to allow ingress and egress by the tenant pending hearing of the reference; an order of permanent injunction to stop the 1st respondent from interfering with the premises until December 31, 2021 for the tenant had paid rent

till that date; an order to stop the 1st respondent from evicting the tenant without issuing proper notice pending hearing and determination of the reference; compensation by way of general damages for loss of business and damage to the tenant's reputation; an order to the OCS Kisii to ensure compliance and costs of the reference. A majority of the prayers were interlocutory in nature pending hearing of the reference, and from what I can discern, the substantive orders were only prayers (a), (d) and (f) which are as follows:-

(a) That the former landlord/2nd respondent be ordered to refund rent security deposit of Kshs 223, 440/= to the tenant.

(d) That a permanent injunction be granted against the landlord/1st respondent prohibiting him from interfering with tenant's business premises and quiet use and possession of the premises until the rent paid is fully utilized i.e until December 31, 2021.

(f) That the new landlord be ordered to compensate the tenant general damages for loss of business and damage to the tenant's reputation.

29. Apart from the actual reference, the appellant also lodged two applications. The first is the application dated October 28, 2021 and the second that dated December 28, 2021. The prayers in the application of October 28, 2021 were actually a duplication of the prayers in the main reference which would mean that it also bore the three substantive orders that I have copied above. The application of December 28, 2021 was prompted because the appellant had wished to vacate the premises by the close of the year but was apparently being frustrated by the 1st respondent who had demanded that she must pay Kshs 150,000/= for the restoration of the premises before she could be allowed to leave the premises. Thus, in the application of December 28, 2021, the appellant sought orders to be allowed free and unconditional exit from the premises and a declaration that the tenant is not liable to pay any money for the restoration of the premises pending hearing and determination of the reference. When replying to the applications, the 1st respondent in her supplementary affidavit sworn on January 5, 2022, asked the tribunal to order the appellant to pay the sum of Kshs 423, 150.40/= being rent payments for January, February and March 2022; security deposit of Kshs 140,960/=; and unpaid electricity of Kshs 23,000/=.

30. The ruling of the Vice Chairman of the tribunal appears to have been a ruling determining the reference and the two applications. It will be recalled that the Vice Chairman allowed the claim of the appellant against the former owner of the premises for refund of the deposit that she had paid to occupy the premises and also allowed the whole claim of the 1st respondent which was put in the supplementary affidavit. I am persuaded that the Vice Chairman fell into error as I will shortly demonstrate.

31. Starting with the claim for refund of deposit against the former owner of the premises, Mocha Place Limited, this could not be entertained by the tribunal, as there was no landlord/tenant relationship between the appellant and Mocha Place Limited when the reference was filed. I have discussed this issue at length earlier in this ruling and I see no need of repeating myself. I have to set aside the order made by the tribunal requiring Mocha Place Limited to reimburse the rent deposit paid and in fact I strike out any claim in the reference against Mocha Place Limited.

32. I am also persuaded that the Vice Chairman fell into error in entertaining the claims of the 1st respondent. The claim of the 1st respondent could not be entertained for the simple reason that the 1st respondent never lodged a reference of its own before the tribunal and never lodged a counter-reference, if such term is acceptable. If the 1st respondent thought that the tenant had given notice to terminate the tenancy that was not in accordance with what is provided in cap 301, then the 1st

respondent, as landlord, needed to lodge her own reference pursuant to section 6 (1) of cap 301, which provides as follows :-

> 6 (1) A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect unti, and subject to, the determination of the reference by the Tribunal:
>
> Provided that a Tribunal may, for sufficient reason and on such conditions as it may think fit, permit such a reference notwithstanding that the receiving party has not complied with any of the requirements of this section.

33. The other option that the 1st respondent had was to file a complaint pursuant to section 12 (4) of the same statute, which provision of law I copied in paragraph 27 of this judgment.

34. . The 1st respondent filed neither and I am not persuaded that a reply to an application can suffice to be a reference under the Act.

35. But even assuming that this was a counter-reference (and for the avoidance of doubt I have found that it was not), the ruling of the Vice Chairman was still manifestly erroneous on substance. The first claim of rent for the months of January, February and March 2022 could not be supported as the tenant had already issued notice terminating the tenancy and had notified the landlord that she was no longer going to be tenant from December 2021. She had fully paid up to that date, and there is no indication whatsoever that the 1st respondent had any problem with the appellant vacating the premises by the end of December 2021. The issue that the 1st appellant raised with the appellant, was never payment of rent for January, February and March 2022, but payment of Kshs 150,000/= for renovation of the premises. There was no basis to shoulder the appellant with rent for January, February, and March 2022 when she was giving vacant possession, not contested by the landlord, by December 2021. In any case, as I have held above, if the landlord was aggrieved by that notice, she needed to file a reference of her own so that it can be determined whether the notice was in accordance with the law or not. On the claim for electricity, the 1st respondent, despite claiming that there was a pending bill of Kshs 23,000/ = never offered any evidence of it. No bill, nor demand for this amount as a pending electricity bill, was ever exhibited by the 1st respondent. The appellant on the other hand deposed on oath that the electricity was prepaid by tokens, and there could be no bill pending, which assertion was never refuted by the 1st respondent. It was manifestly wrong for the Vice Chairman to impose an obligation upon the appellant to pay a non-existent electricity bill. On the claim for renovation of the premises, the 1st respondent claimed Kshs 150,000/= again completely unsupported by any evidence. In fact, in her ruling, the Honourable Vice Chairman, did acknowledge that none of the parties tendered any expert evidence to prove the real costs of the repairs. With respect, there was therefore no basis upon which to make the award of Kshs 150,000/= as repairs. Lastly, on costs, at paragraph 14 of the judgment, the learned Vice Chairman stated that the order that commends itself is for each party to bear their own costs. Despite this, in her final orders at paragraph (c), she awarded costs of Kshs 25,000/= to the 1st respondent, going completely contrary to her earlier determination. It was also wrong for the Honourable Vice Chairman to hold that there was no other issue pending determination. It will be recalled that in the reference, the appellant had a claim for general damages. There was no mention of this in the judgment.

36. For the above reasons, I am persuaded to allow this appeal in so far as it concerns the 1st respondent but I will disallow the claim against the 2nd respondent who ought not to have been a party before the tribunal. I make an order setting aside in its entirety the judgment of the Vice Chairman of the tribunal

made on June 10, 2022. I will make the order that the tribunal proceeds to hear the reference dated October 28, 2021 and determine the prayers that have not been rendered moot by the termination of the landlord/tenant relationship.

37. Having allowed the appeal as against the 1st respondent, the 1st respondent will pay the costs of this appeal to the appellant. I will make no order for or against the 2nd respondent on costs, as the 2nd respondent never participated in any way before the tribunal and before this court.

38. While this appeal was pending, the appellant had deposited some money as security for the due performance of the decree. This money, and all the interest accrued, be released forthwith to the appellant.

39. Judgment accordingly.

DATED AND DELIVERED AT KISII THIS 5 DAY OF JULY 2023

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII