



**Nyangweso v Wakulo (Environment and Land Appeal E047 of 2022)  
[2024] KEELC 266 (KLR) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 266 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND APPEAL E047 OF 2022  
DO OHUNGO, J  
JANUARY 31, 2024**

**BETWEEN**

**RAMADHAN NYANGWESO ..... APPELLANT**

**AND**

**RAMADHAN MUMIA WAKULO ..... RESPONDENT**

*(Being an appeal from the judgment and decree of the Business Premises  
Rent Tribunal at Kakamega (Hon. Gakubi Chege, Vice Chair) delivered  
on 30th September 2022 in Kakamega BPRT No. E045 of 2022)*

**JUDGMENT**

1. Litigation leading to this appeal commenced on 25<sup>th</sup> April 2022 when the respondent filed Notice of Motion dated 21<sup>st</sup> April 2022 in the Business Premises Rent Tribunal at Kakamega seeking an order of eviction of the appellant from Plot No. 19A Bulimbo Market (the suit premises) and that the OCS Harambee Police Station to ensure compliance with the order. He contended within the application and the supporting affidavit that the appellant was his tenant in respect of the suit premises and that he had served upon the appellant a notice of termination pursuant to Section 4 (2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*. The appellant swore and filed a replying affidavit in opposition to the application.
2. Upon hearing the application, the tribunal (Hon. Gakuhi Chege, Vice Chair) delivered judgment on 30<sup>th</sup> September 2022 and made the following orders:
  - a. There exists a landlord/tenant relationship between the applicant and respondent herein over the business premises on plot no. 19A, Bulimbo Market.
  - b. The tenancy notice served upon the tenant by the landlord dated 10th January 2022 is hereby upheld and the tenancy herein is deemed as duly terminated.



- c. The tenant shall forthwith deliver vacant possession of the demised premises and in default shall be evicted therefrom by a licensed auctioneer who shall be provided with security by OCS, Harambee Police Station during the exercise.
  - d. The costs of this suit assessed at KShs 25,000 are awarded to the landlord against the tenant.
3. Dissatisfied with the outcome, the appellant filed this appeal through Memorandum of Appeal dated 25<sup>th</sup> October 2022. The following grounds of appeal are listed in the memorandum:
1. That the learned trial vice chairperson erred in fact and in law for failing to put in fact that the Respondent is not the administrator to the estate of his late father for him to be made the current landlord.
  2. That the learned trial vice chairperson misdirected himself in law and in fact by allowing the Respondent to evict the Appellant without putting into consideration that the Appellant had stayed on the premises for the past 5 years and needed time to move out.
  3. That the learned trial Vice Chairperson erred in fact and in law in failing to find that the Appellant had paid a good will to the Respondent's late father and the same should be refunded.
  4. That the learned trial Vice Chairperson erred in fact and in law in failing to find that there was no Landlord/Tenant relationship between the Appellant and the Respondent.
  5. That the learned Vice Chairperson erred in fact and in law in failing to find that the Appellant had a Landlord/Tenancy relationship with another person.
  6. That the learned Vice Chairperson erred in fact and in law in failing to consider the appellant's submissions or factual issues raised from evidence tendered at the trial, the principles canvassed and authorities attached thus leading to a misdirection in law and fact.
  7. That the learned Vice Chairperson's findings were against the weight of evidence produced by the appellant and have led to a miscarriage of justice.
4. The appeal was canvassed through written submissions. The appellant argued that he entered into a tenancy agreement with the respondent's father who later passed away and that since succession proceedings were pending, ownership of the suit premises could not have been transferred to the respondent through a family meeting. That the learned vice chairperson contradicted himself in the judgment when he held that the respondent is the landlord but at the same time acknowledged that the judgment could not determine the question of who would eventually inherit the suit premises. He therefore contended that the respondent is not the landlord and did not therefore have the standing to commence the tribunal proceedings.
5. The appellant further argued that although the respondent claimed that the rental agreement that he had annexed was a forgery, the respondent did not offer any evidence to support those allegations. He therefore contended that the agreement was valid and that the respondent ought to have given notice of six months as provided in the agreement. He further faulted the learned vice chairperson for not ordering a refund goodwill of KShs 50,000 and return to him of steel door and steel windows that he had affixed on the premises.
6. In response, the respondent argued that his father was a Muslim and that his family having held a meeting at which it was agreed that the suit premises be given to him, he had the responsibility to ensure that the suit premises are preserved pending further processes. Relying on the case of Republic v Kabue



- Kigera [1986] eKLR and Section 7 (1) (f) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, he argued that the notice of termination that he issued was in accordance with the notice that he received from the county government and that there were public health concerns involved. That since the main reason for the termination was to renovate the premises in compliance with the county notice, the termination should be upheld. Regarding the issue of refund of goodwill, he argued that according to Muslim/Sharia law, all debts of a deceased person are to be raised during the burial ceremony and that the appellant did not raise such a claim.
7. As the first appellate court in this matter, this court has an obligation to re-consider and re-evaluate the evidence and to determine whether the conclusions reached by the learned trial magistrate are to stand or not and to give reasons either way. See *Selle & Another v Associated Motor Boat Co. Ltd & Others* (1968) EA 123 and *Abok James Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR.
  8. I have considered the grounds of appeal, the pleadings, the evidence, and the submissions. The issues that arise for determination are whether a landlord/tenant relationship existed between the parties herein and whether the reliefs sought ought to have issued.
  9. It is not in dispute that a landlord/tenant relationship existed between the appellant and the respondent's late father who passed away in the year 2021. The respondent contends that after the passing away of his father, the family met and agreed that the suit premises be handed to him even as succession proceedings in respect of the deceased's estate were being pursued before the Kadhi's Court at Bungoma.
  10. The term "landlord" is defined at Section 2 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* to mean the person for the time being entitled, as between himself and the tenant, to the rents and profits of the premises payable under the terms of the tenancy. It should be noted that relationship is subjective, as between the landlord and the tenant. The section defines "tenant" to mean the person for the time being entitled to the tenancy whether or not he is in occupation of the holding, and includes a sub-tenant. It thus seems to me that as between tenant and landlord, the landlord does not necessarily have to be the person who is legally entitled to or who is the proprietor of the premises.
  11. The appellant contended that he received a notice from the respondent's brother by the name Salim Wekulo stating that he (Salim Wekulo) was entitled to rent. The respondent went as far as stating that he was paying rent to Salim Wekulo after the death of the deceased. Neither the appellant nor Salim Wekulo availed any documentary proof that rent was being collected by Salim Wekulo. On the other hand, the respondent asserted in his further affidavit that the appellant was paying rent to him. He even annexed copies of rent receipts issued to the appellant between June 2021 and December 2021. Additionally, the respondent annexed a copy of minutes of family meeting held on 21<sup>st</sup> July 2021 pursuant to which the family handed the suit property to him. In view of the definitions at Section 2 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* and considering that it was demonstrated that the appellant was paying rent to the respondent, I agree with the learned Vice Chairperson that there existed landlord/tenant relationship between the parties herein. That relationship is independent of both the proprietorship of the suit premises and the succession proceedings pending before the Kadhi's Court. As opined by the authors of Halsbury's Laws of England 4<sup>th</sup> Edition Vol. 27 at page 11, while the tenancy continues, a tenant is estopped from denying the title of the landlord whether or not he has notice of any defect in title.
  12. The respondent unequivocally deposed that he served the appellant with a notice of termination pursuant to Section 4 (2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*. He annexed a copy of the notice which was dated 10<sup>th</sup> January 2022 as well as an affidavit of service



wherein it was deposed that the notice was served upon the appellant personally on 19<sup>th</sup> February 2022 at the suit premises. I have perused the appellant's replying affidavit. There is no clear and unambiguous denial of service. Instead, the respondent opted to focus on disputing the appellant's capacity to issue the notice. In terms of Section 10 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, the appellant having failed to notify the respondent of his unwillingness to comply with the notice, the notice took effect, and the respondent was entitled to the order of eviction which he sought in the Notice of Motion.

13. Regarding the appellant's contention that he was entitled to a refund of goodwill of KShs 50,000 and return to him of steel door and steel windows, I have perused his replying affidavit and written submissions before the tribunal, and I note that he did not seek such reliefs. He cannot fault the tribunal for not awarding him that which he did not pray for and prove.
14. The upshot of the foregoing is that I find no merit in this appeal, and I therefore dismiss it with costs to the respondent.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 31<sup>ST</sup> DAY OF JANUARY 2024.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

No appearance for the Appellant

No appearance for the Respondent

Court Assistant: E. Juma

