



**Lobo v Kingori (Environment and Land Appeal E010 of 2022)  
[2024] KEELC 3684 (KLR) (15 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 3684 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E010 OF 2022  
CK YANO, J  
FEBRUARY 15, 2024**

**BETWEEN**

**PAUL LOBO ..... APPELLANT**

**AND**

**DOMINIC NTONGAI KINGORI ..... RESPONDENT**

*(Being an appeal against the Judgment/decree /order of the Honourable  
Chairman of the Business Premises Rent Tribunal Mr. Cyprian Mugambi  
Nguthari Delivered on 6th October, 2021 in Tribunal Case No. 79 of 2018(Meru)*

**JUDGMENT**

1. On 19<sup>th</sup> October, 2018, the respondent herein and one Maria Gatitu as landlords issued a landlord's notice to terminate tenancy under Section 4(2) of Cap 301. The said notice was to take effect from 1<sup>st</sup> January, 2019.
2. The appellant herein, as tenant did not wish to comply with the respondents notice and filed his reference on 17/12/2018 in opposition to the Notice of termination served upon him by the respondent.
3. The parties filed and relied on their written statements, documents and submissions.
4. The respondent's case was that he is the landlord of the premises known as LR. No. Meru Municipality Block 11/61 wherein the appellant operates a hotel business. That he did serve the appellants as tenant with a notice to terminate tenancy dated 19<sup>th</sup> October, 2018 effective 1<sup>st</sup> January, 2019, but the appellant refused to vacate and instead filed the reference. The reason for terminating the tenancy was to carry out renovations on the suit premises by putting up new self-contained rooms as some facilities like toilets and bathrooms were away from the hotel rooms. The respondent contended that the hotel business ran by the appellant did not have good facilities.



5. On his part, the appellant contended that he had been a tenant in the suit premises since 1985 operating a bar and restaurant business. That he took over the business premises on the understanding that all the beneficiaries of Joseph Kingori (Deceased) would benefit from the same. That the respondent filed and obtained Letters of Administration in respect of the estate of the said Joseph Kingori and were only trustees and ought to seek the consent of the other beneficiaries.
6. The appellant averred that he objected to the notice to terminate the tenancy because he solely relied on the said business for his livelihood and that of his entire family. The appellant contended that the stood to suffer substantial loss if the tenancy was terminated as he did not have alternative premises to move his business. He further stated that all the other beneficiaries of the estate of the deceased had no problem with the appellant's tenancy. The appellant further states that the alleged plan for renovation of the said premises and all other documents had been tailored and authored for purposes of the case before the Tribunal and should be disregarded.
7. Upon considering the evidence on record and the submissions by the parties, the learned Chairman of the Tribunal dismissed the appellant's reference with costs and upheld the respondent's notice to terminate the tenancy as per Section 9 of Cap 301. The tribunal granted the appellant up to 31<sup>st</sup> December, 2021 to vacate suit premises, in default would be evicted by the respondent.
8. Being aggrieved by the said Judgment and decree, the appellant filed the present appeal and set out the following grounds:-
  1. The Learned Chairman erred in law and in fact for dismissing the appellant's reference whereas the respondent did not prove on balance of probability that he intended to renovate the suit premises for the purposes of a business to be carried on by him therein.
  2. The Learned Chairman erred in Law and in fact for dismissing the appellant's reference whereas the notice to terminate tenancy which was issued to the appellant by the respondent did not indicate for what purpose the respondent intended to occupy the suit premises for.
  3. The Learned Chairman erred in Law and fact for dismissing the appellant's reference whereas the notice to terminate tenancy which was issued to the appellant by the respondent was incurably defective for contravening provision of Section 7(1) (g) of the *Landlord and Tenant (Shops, Hotel and Catering Establishment) Act*, Cap 301 of the Laws of Kenya.
  4. The Learned Chairman erred in Law and in fact for failing to find and for reasons that he failed to find that the respondent was not terminating the tenancy between herself and the appellant in good faith.
  5. The Learned Chairman erred in Law and fact for failing to find and for reasons that the failed to find that the respondent was not terminating the tenancy between himself and the appellant so that she can use the suit premises for carrying on his business therein.
  6. The Learned Chairman erred in Law and fact for making a decision on issues that were not raised by the respondent in the notice to terminate tenancy.
  7. The Learned Chairman erred in Law and in fact for making a decision on the issue of rent whereas the same has not been raised by the respondent in his notice to terminate tenancy.
  8. The Learned Chairman erred in Law and fact for holding and for reasons that he held that the appellant had outstanding rent owed to the respondent.
  9. The Learned Chairman Judgment was against the weight of evidence.



9. The appellant prays the aforesaid Judgment/orders be set aside, that his reference be allowed with costs. He also prays for costs of the appeal.
10. Pursuant to directions issued by the court on 11<sup>th</sup> October, 2023 the appeal was canvassed by way of written submissions which were duly filed by all the parties through their respective advocates on record.

### **Appellant's Submissions**

11. The appellant filed submissions dated 24<sup>th</sup> October, 2023 through the firm of M/s Kaberia Arimba & Company Advocates wherein it is submitted that the appellant and the respondent's father, one Joseph Kingori (Deceased) entered into an oral tenancy agreement sometime in the year 1985 and the appellant occupied the suit premises operating a bar and restaurant business. That the appellant was allowed to embark on his business by the respondent's father and mother, Joseph Kingori (Deceased) and Maria Gatitu (Deceased) from 1985 and all was going on well and the respondent never complained about the renovations till the year 2018 when the respondent served the appellant with the termination notice on the grounds the he intended to renovate and upgrade the building and could not do so without first obtaining vacant possession.
12. The appellant submitted that the had done tedious and expensive renovations on the suit premises in an attempt to improve the face of the premises by installing water, electricity, putting in place an alternative power supply (generator) and ceiling boards, tiles, replacing wooden doors with metallic steel doors, painting the who premises and decorating the wall and therefore the old dilapidated house is in a very good and modern condition.
13. The Appellant's counsel identified the issue for determination to be whether the trial court erred in dismissing the appellant's reference, yet the notice to terminate tenancy contravened the provisions of Section 7(10 (g) of Cap 301 Laws of Kenya.
14. It is the Appellant's submission that under Section 66(1)(a) of the Land Act 2012, it is implied that every lease agreement for the lessee to pay rent referred by the lease at all times and in the manner thereon specified. That in the instant case, the appellant has faithfully, religiously and timeously paid the rent as agreed and had never been in any rent arrears. The appellant's counsel cited the provisions of Section 65(1) (a) of the Land Act t were the said obligation is implied in every lease agreement.
15. It is the appellant's submission that the assertions that were cited by the respondents was an afterthought and a scheme used by the respondent to harass the appellant. The appellant submitted that the respondent is only an administrator of the estate of his father Joseph Kingori (Deceased) and that not demonstrated that he had the consent, authority and/or blessing of the other beneficiaries of the estate to carry out any renovations and/or upgrading of the suit premises. The appellant argued that the respondent did not act in good faith and should be stopped from interfering with the appellant's quiet occupation of the suit premises.
16. The appellant's counsel further submitted that the respondent's aforesaid notice is legally and factually vague and that the respondent is spurred by jealousy, avarice and greed because of the appellants flourishing business. It is also the appellant's submission that the respondent did not have a claim to be entertained by the trial court. That the appeal is merited and the same ought to be allowed with costs.

### **Respondent's Submissions**

17. The respondent filed submissions dated 15<sup>th</sup> November, 2023 though the firm of M/s Mbichi Mboroki & Kinyua Advocates. It is their submission that from the evidence on record, the respondent had



sufficiently proved on a balance of probabilities that he intended to renovate the suit premises and urged the court to dismiss ground 1 of the appellant's appeal. The respondent's counsel relied on the case of *William Kabogo Gitau Versus George Thuo & 2 others* [2010]eKLR and cited Section 109 of the *Evidence Act* on what amounts to proof on a balance of probabilities.

18. On ground 2 of the Appeal, the respondent's counsel submitted that there is on record a Notice to terminate tenancy dated 19<sup>th</sup> October, 2018 issued by the respondent to the appellant. That under paragraph 3, the notice clearly stated the grounds on which the landlord sought to terminate the tenancy and that in response, the appellant stated that he would not comply with the said notice. That this is clear proof that the appellant has utter disregard for the law and intended to maliciously frustrate the respondent. It was submitted that that ground must fail.
19. With regard to ground of the appeal, learned counsel for the respondent cited Section 4(2) and (5) and Section 7(1), (f) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 and submitted that the termination notice was in the prescribed form and therefore effective as for the provisions of the said Act. The respondent's counsel faulted the appellant for quoting Section 7(1)(g) of the said *Act* which was irrelevant since the respondent did not intend to occupy the suit premises for purposes of carrying out a business thereon.
20. The respondent submitted that he has never harassed the appellant and urged the court to dismiss grounds 4 of the Appeal. The respondent further submitted that the genuinely intends to renovate the suit premises to keep up with the current trends of hotels in Meru Town, adding that the intended renovations are major and cannot be carried out while the appellant is in occupation since the renovations would put the occupants at risk of injury. Further that no contractor would agree to carry out such renovations while there is a business running in the premises as it is illegal.
21. The respondent further urged the court to dismiss ground 5 of the appeal since the notice of termination issued stated the grounds of termination and accused the appellant of raising issues that were not part of the Judgment appealed against. The same is said of grounds 7 and 8 of the appeal.
22. Regarding ground 9 of the appeal, Learned counsel for the respondent submitted that the Tribunal is a proper adjudicating Authority which is legally bound to act fairly and in good faith, without bias and in a judicial temper, to give each party the opportunity of adequately stating its case. That the appellant did not in his evidence elaborate on the issues which formed the basis of his case. That on the other hand, the respondent presented adequate proof to support his proposition by tendering before the tribunal both documentary and oral evidence which remained uncontroverted by the appellant. It is the respondent's submission that the learned Chairman of the tribunal properly analyzed the evidence before him and his Judgment was in accordance with that evidence. That the tribunal did not misdirect itself on material point of law and that the decision was not against the weight of the evidence. It is the respondent's submission that the appeal is purely misconceived and devoid of merit and prayed for its dismissal with costs to the respondent.

### **Analysis And Determination**

23. I have perused the record of Appeal. I have also considered the grounds set out in the Memorandum of Appeal and the parties' rival submissions. I have also taken into account the relevant legal frameworks and jurisprudence. In my humble view, the issues that arise for determination are:
  - i. Whether there was a valid notice issued to terminate the tenancy.
  - ii. Whether the Judgment of the tribunal was against the weight of evidence.
  - iii. Whether the appeal has merit or not.



24. Regarding the first issue, it is not in dispute that the respondent issued notice dated 19<sup>th</sup> October, 2018 to the appellant. Its effective date was given as 1<sup>st</sup> January, 2019. The reason given by the respondent for terminating the tenancy was because he intended to renovate and upgrade the suit premises and could not do so without first obtaining vacant possession.
25. I have perused the said notice. The same was expressed to be brought under Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 Laws of Kenya. The same provides as follows:-
- “4(2) Landlord who wishes to terminate a controlled tenancy or to alter, to the detriment of the tenant any term or condition in or right or service enjoyed by the tenant under such a tenancy, shall give notice in that behalf to the tenant in the prescribed form”.
26. Section 4(4) of the said Act provides that “no tenancy notice shall take effect until such date not being less than two months after the receipt thereof by the receiving party as shall be specified therein...”
27. Further, Section 4(5) of Cap 301 provides:-
- “A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and requires the receiving party to notify the requesting party in writing within one month after the date of receipt of the notice whether or not he agrees to comply with the notice”.
28. Regulation 4(1) of the *Landlord and Tenant (Shops forms and procedure) Regulations* provides that the notice under Section 4(2) of the Act by a landlord shall be in Form A in the schedule of those regulations.
29. Having looked at the Landlord’s notice to terminate tenancy, I am satisfied that the same complied with all the requirement of Section 4(2), 4(4) and 4(5) of the Act as well as regulation 4(1). Therefore, and as rightly held by the Tribunal, I find that the notice to terminate tenancy dated 19<sup>th</sup> October, 2018 was a valid notice under the Act.
30. The next issue to consider is whether the Judgment of the Tribunal was against the weight of evidence. The notice in question stated that the respondent intended to renovate and upgrade the suit premises and could not possibly do so without first obtaining vacant possession. The respondent adduced evidence before the tribunal which included an approved plan for the proposed renovations, a letter from the bank confirming the availability of funds for the renovations, a certificate of compliance from the National Construction Authority and a license from NEMA. It is clear from the documentary evidence presented by the respondent that indeed the respondent intended to carry out substantial renovations on the suit premises. No doubt the proposed renovations could not be carried out while the premises were in use. That would have posed serious risk to the appellant, his customers and the public in general. It is therefore, my finding that the Learned Chairman of the Tribunal was justified in upholding the notice to terminate the tenancy. In my view, the appellant’s argument that he had done tedious and expensive renovations in the suit premises was not supported by sufficient evidence. I am also not persuaded by the appellants argument that he stood to suffer substantial loss if the said tenancy was terminated. In my humble view, the reason the appellant was given notice was intended to allow him source for alternative premises where he would carry on with his business.
31. Having evaluated the tribunals findings and the evidence on record, I do not see any basis upon which this court can fault the Tribunal. It is therefore my finding that based on the evidence adduced before



the Tribunal, the tribunal was justified in arriving at the decision it made and I see no reason to interfere with the same. The upshot is that I find this appeal as lacking in merit and the same is hereby dismissed with costs to the respondent.

32. In view of the expiry of the notice in the judgment of the tribunal, the appellant is granted up to 15<sup>th</sup> May, 2024 to give vacant possession, in default the respondent will be at liberty to evict him in compliance with Section 152E of the [Land Act](#).

32. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 15<sup>TH</sup> DAY OF FEBRUARY, 2024**

**HON. C. YANO**

**ELC – JUDGE**

In the presence of:-

Court Assistant: Kiragu

No appearance for advocate for appellant,

but Appellant present in person.

No appearance for respondent

