



REPUBLIC OF KENYA

BUSINESS PREMISES RENT TRIBUNAL

TRIBUNAL CASE NO. 47 OF 2014 (THIKA)

JOHN GUCHU NJOROGE

STEPHEN NJUGUNA MAINA.....TENANTS/APPLICANTS

VERSUS

JOTHAM NJAMI MWARIRI.....LANDLORD/RESPONDENT

JUDGEMENT

The Landlord/Respondent herein served its Tenant/Applicant in the reference John Guchu Njoroge and Stephen Njuguna Maina with notices to terminate their tenancy by notices dated 26th May 2014. The Tenancies were to be terminated with effect from 1st November 2014. The Tribunal shall revisit and evaluate the grounds of termination of tenancies later in the judgment.

The Tenant did not wish to comply with the Landlord's notice and filed the reference in the Tribunal. The parties have given evidence and the advocates of the parties have filed written submissions. The mandate of the Tribunal now is to evaluate the evidence, and the written submissions and all the exhibits and make a determination of the reference under **section 9 of Cap 301**.

Summary of the Landlord's Case

The Landlord Jotham Njami Mwariri testified as hereunder

That he is the Landlord in the reference. That he is a businessman. That he is the owner of plot number 4953/478 Thika town Block 10 CBD. That the Tenant/Applicant herein are his Tenants in the suit premises. That he served the Tenants herein with notices to vacate the premises. The notices are dated 26th May 2014. The reason why he wants the Tenants to vacate the premises is that he wants to renovate the same. The current premises comprises of 5 shops with iron sheet roofs. I want to remove the iron sheets and put some slabs.

That he wants to put a 5 storey building. That the Architectural plans were approved on 8th August 2014. He produced the Architectural drawings as an exhibit before the Tribunal. Landlord's exhibit 1. The Landlord also produced as exhibit the following documents;

Letter of approval dated 8th August 2014, exhibit 2. Letter from the Bank (NIC) exhibit 3.

That he did not proceed with the project because the Tenants did not vacate. That he is ready to proceed with the project. He is willing to give the Tenants priority to reoccupy the completed premises. The Tenants have other business premises at Thika. That he is seeking an order for vacant possession.

The project cannot be carried out while the Tenants are in the premises.

The Landlord was Cross-examined by the advocate for the Tenant Mr Kithinji and he made the following further statements.

That he is the registered proprietor of the suit premises. That the Tenants pay rent to him. There are 3 other Tenants in the premises. The Tenants are Alfred Wanoike and Kihara. The Tenants pay rent to the agent. That he served them with notices to vacate the premises. The other Tenants are willing to vacate the premises. They have agreed with the agent that they will vacate the premises. The notice talks about renovations. I intend to put up a 5 storey building. There will be 15 shops on the ground floor. The Tenants are not parties to the dispute at the ELC 867/2014 at Milimani. He stated that the project will cost about 40,000,000 (forty million). That he has about twenty million (shs 20,000,000). That he did not have a copy of the bank statement.

The Landlord called a witness namely Austin Kamau who testified as follows;

That he is a registered and practicing Quantity Surveyor (Q.S). That he started practicing in 2007. That he holds a Bachelor Degree in Quantity Survey (University of Nairobi).

That he was instructed by the Landlord to prepare a bill of quantities in respect of LR Block 4953/478 Thika.

That he inspected the premises. The Landlord intends to put up an ultra modern business of 5 stories. The project will cost about shs 44,382,937/-. It is not possible to carry out the proposed constructions while the Tenants are in the premises. The existing structures will have to be demolished. The witness produced the bill of costs as an exhibit Landlord No. 4.

Summary of the Tenant's Case

For and on behalf of the Tenants John Guchi Njoroge testified as hereunder.

That he is a businessman at Thika. That he knows Stephen Njuguna. He is a Tenant who pays a monthly rent of shs 120,000 for the 2 shops. That he has been in the premises for the last 20 years. That Stephen Njuguna has been in the premises from 1989. That they were served with the notices by the Landlord to terminate their tenancy. That the Landlord's notice stated that he intends to carry on major renovations.

That there are 5 shops on the suit premises. The other shops are occupied by Mr Kuria and Mr Wanyoike. He occupies one shop and the other 2 shops are occupied by the Tenant in the reference Mr Stephen Njuguna.

That he does not know whether the other Tenants were served with notices to vacate the premises.

The approved plan is for a new building and not renovations. There were no documents for renovation produced. The Landlord has not produced documents to show that he has the resources to carry out the project.

The Landlord did not furnish the bank with any of the documents requested by the bank namely;

- a) Audited financial statements for the last 3 years.
- b) 12 months certified Bank statements.
- c) Nema certificate of compliance.
- d) National Construction Authority compliance.

The letter does not show that the bank has approved the loan. That he is aware that there is an ownership dispute in ELC 867/2014 at Milimani. The case has been transferred to the ELC Court at Thika.

The Tenant was cross-examined by the advocate for the Landlord Mr Kangiri and the answers to various questions are on record.

Evaluation of the Evidence

The Tribunal upon consideration of the evidence on record, all the exhibits and the written submissions of the advocate of the parties makes the following findings;

1. The parties before the Tribunal are Landlord and Tenants and the tenancy is controlled and the Tribunal has jurisdiction to hear and determine the reference.
2. The reason for termination of tenancy as per the Landlord's notice dated 26th May 2014 is stated as hereunder.

"I intend to carry out major renovations on the demised premises."

3. The evidence on record from the Landlord and the Quantity Surveyor is that the Landlord intends to put up an ultra modern 5 storey building on the suit premises and the existing structure will have to be demolished.
4. The grounds for termination of tenancy are inconsistent with the evidence of the Landlord, the Quantity Surveyor and the exhibits on record that the Landlord intends to put up a 5 storey building.
5. The Landlord has not adduced evidence of financial resources including the shs 20,000,000 which he said was available.
6. The proposed project has not been submitted to Nema for environmental impact assessment and issuance of the certificate from Nema.
7. There is no evidence to show that the other Tenants were served with notices to terminate their tenancies and that they are willing to vacate the premises.

All in all, the Tribunal is satisfied that the Landlord has not proved his notices on a balance of probabilities.

The Tribunal makes the following determination of the references;

1. The Tenant's references dated 28th November 2014 are allowed.
2. The Landlord's notices dated 26th May 2014 are dismissed.
3. The Landlord shall pay the Tenant the costs of the references.
4. Costs shall be agreed and taxed by the Tribunal.

Judgment delivered this **18th day of June 2019** in the presence of **Kithinji** for the Tenant. Advocate for the Landlord absent.

MBICHI MBOROKI

CHAIRMAN

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