



**REPUBLIC OF KENYA**

**BUSINESS PREMISES RENT TRIBUNAL AT KAKAMEGA**

**TRIBUNAL CASE NO. E036 OF 2021**

**NAGEYE MOHAMUD DAHIR.....TENANT/APPLICANT**

**VERSUS**

**RECHO NABUCHA WAFULA.....LANDLORD/ RESPONDENT**

**PATRICK WEKESA WAFULA.....CARETAKER / RESPONDENT**

**RULING**

1. The Tenant moved this Tribunal by a notice of motion application under certificate on **13<sup>th</sup> September 2021** seeking this Tribunal's intervention to break into the suit premises and be reinstated accordingly as tenants which orders were granted on **14<sup>th</sup> September 2021**.
2. The Tenants reference dated **13<sup>th</sup> September 2021** also indicated threat of eviction without notice and refusal to accept rent by the Landlady.
3. The Landlord filed a replying affidavit and stated briefly that there is no Landlord Tenant relationship as yet that it is clear the Landlady had refused to sign the lease agreement upon meeting the tenant and directed her lawyers to refund the deposited sums of money being **493,200/-**.
4. It is stated that on **8<sup>th</sup> September 2021** the landlady proceeded and leased the premises to one Lucy Karanja and another and the agreement was signed and witnessed by all her children for a period of 5 years at **60,000/-** shillings per month. Evidence is also produced of correspondences including expenses incurred by the said Lucy in renovating the said premises before orders of this Tribunal were issued and the premises have been locked to-date.
5. The Landlord filed an application to review and or set aside the said orders of **16<sup>th</sup> September 2021** and reinstate the new Tenants as there seemed to be no premises available to be let to the Tenant herein. Both applications came before me and parties have filed submissions which I have looked at and I appreciate their input. The key question I am left to deal with is that was there a Tenant/Landlord relationship between the Landlord and the Tenant herein"
6. A tenancy agreement is a contract like any other before it is governed by **Cap 301** it must meet the Tenants of a contract that is to say there must be an offer, acceptance and consideration.
7. From the evidence adduced by parties in this matter more particular the various email correspondences and the two lease agreements, I am persuaded that consideration was paid but I am at pains to see when the offer made was accepted by the other party.
8. The email correspondences annexed in various affidavits indeed build up to a lease agreement being signed between one Patrick Wekesa Wafula and Nageye Mohamud Dahir. This would have been proof enough of the contract except for one thing capacity. All

parties do not dispute the Landlady is Recho Wekesa and indeed the lease states that the said Patrick is Landlord pursuant to a power of attorney donated to him by Recho the said power is not produced and therefore this Tribunal cannot confirm in what capacity Patrick Wekesa Wafula was signing on behalf of Recho.

9. Further the agreement produced has a thumb print of the Landlady Recho and witnessed by several persons whom I suspect must be her children. Curiously it is also signed by the same Patrick Wekesa Wafula.

10. Having found for want of acceptance and want of capacity the Tenant's claim must fail. I am inclined to agree with the Landlord's application dated **22<sup>nd</sup> September 2021** and proceed to set aside orders obtained by the Tenant therein in total.

11. Further I dismiss the Tenant's application and reference dated **13<sup>th</sup> September 2021** with costs.

12. The Landlord shall immediately take possession of the premises and hand over the same to the new Tenants and or any other Tenant they so wish. If the Tenants herein fail to remove their padlock in 3 days the Landlord is at liberty to break in with the help of OCS Bungoma Police and take possession.

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 7TH DAY OF JANUARY, 2022** in the presence of **Maloba** for the **Landlady** and **Hassan** for the **Tenant**.

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**



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