



REPUBLIC OF KENYA

BUSINESS PREMISES RENT TRIBUNAL

VIEW PARK TOWERS 7TH & 8TH FLOOR

TRIBUNAL CASE NO. 123 OF 2020 (NAKURU)

ANTONY MAINA MBUTUA T/A

SPEAR SUPERMARKET.....LANDLORD

VERSUS

TABITHA WANJIKU.....TENANT

ESTHER NJERI.....TENANT

CECILIA WANGARI.....TENANT

ANTHONY WAGURA.....TENANT

RULING

1. The Tenant's/Applicant's notice of motion dated **5th January 2021** seeks the following orders;
 - a. Spent.
 - b. Spent.
 - c. That this honourable Tribunal be pleased to set aside or review the orders granted to the Landlord/Respondent on **29th December 2020**.
 - d. That the Tenant's reference filed on **24th March 2020** against the Landlord's notice to terminate tenancy issued on **6th March 2020** be set down for *inter partes* hearing.
 - e. That the OCPD and OCS Nyahururu Police Station do and is hereby directed to enforce the orders.
 - f. Costs.
2. The application is based on the grounds set forth on the face of the application and the affidavit of Anthony Wagura. The affidavit and the grounds relied herein may be summarized as follows;

- a. That the Applicants herein filed references against the Landlord's notice to terminate the tenancies.
 - b. That the application by the Landlord dated **20th July 2020** was never served upon the Applicants.
 - c. That the Applicants are long serving Tenants of the Landlord/Respondent and solely depend on the business on the suit premises for their livelihood.
 - d. That the Tenants are not in breach of any conditions of their tenancy.
 - e. That it is only fair that the references be set down for *hearing inter- partes*.
3. The application is opposed. The Landlord/Respondent has sworn a replying affidavit which I proceed to summarize as follows;
- a. That the Respondent followed due process in his quest to terminate the Applicant's tenancies.
 - b. That the notice to terminate the tenancies was issued under the provisions of **Cap 301** of the Laws of Kenya.
 - c. That some Tenants have already complied with the notice to vacate.
4. I have gone through the affidavit of the Respondent and it does not deny the complaint by the Applicants that they were never served with the application dated **20th July 2020**. It is therefore clear that the application proceeded ex-parte. The Applicants had a right to be heard before the orders were issued.
5. In view of the fact that the Applicants had already filed references opposing the notice to terminate those references ought to be determined before any application for eviction can be entertained.
6. I will in the circumstances allow the application dated **5th January 2021** and further direct the references filed by the Applicants to be set down for hearing on a priority basis. In order to facilitate the expedited hearing of the references, I order that this matter be heard together with BPRT case numbers **54/2020, 35/2020, 56/2020** and **57/2020**.
7. The references will be heard on **25th January 2021**. Counsel for the Tenants to be served.

HON. CYPRIAN MUGAMBI NGUTHARI

CHAIRMAN

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON CYPRIAN MUGAMBI NGUTHARI THIS 3RD DAY OF DECEMBER, 2021 IN THE PRESENCE OF ANTHONY, THE LANDLORD AND IN THE ABSENCE OF THE TENANTS AND COUNSEL.

HON. CYPRIAN MUGAMBI NGUTHARI

CHAIRMAN

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