

KENYA / JUDGMENT

Muthoni v Mohamed [2026] KEBPRT 20 (KLR)

[2026] KEBPRT 20 (KLR)

COURT

Business Premises Rent Tribunal

BEFORE

CN Mugambi

CASE / FILE NUMBER

Tribunal Case E646 of 2025

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

Muthoni v Mohamed (Tribunal Case E646 of 2025) [2026] KEBPRT 20 (KLR) (30 January 2026)
(Ruling)

Neutral citation:

[2026] KEBPRT 20 (KLR)

Republic of Kenya

In the Business Premises Rent Tribunal

Tribunal Case E646 of 2025

CN Mugambi, Chair

January 30, 2026

Between

Christine Muthoni

Landlord

and

Ali Noor Mohamed

Tenant

Ruling

Introduction

1.The Landlord's Application dated 4.06.2025 seeks the following orders;-(a)That the Tenant be compelled to immediately pay rent arrears of Kshs. 105,000/=(b)That the Tenant be ordered to forthwith vacate the premises known as Nyayo Market Room No. 18 and handover vacant possession to the Landlord, failing which the Landlord be at liberty to evict the Tenant using an appointed auctioneer.(c)That the OCS Kitale Police Station to provide security and ensure compliance with the orders sought.

The Landlord's Deposition

2.The Applicant's affidavit sworn on 4.06.2025 may be summarized as follows;-a.That on 1.01.2019, she entered into a lease agreement with one Mr. Yonis Ibrahim Ali for a period of ten (10) years and the lease was to expire on 1.01.2019.b.That the said lease was later assigned to the Respondent herein who became a Tenant of the Applicant.c.That the Applicant served the Tenant with a notice to terminate tenancy dated 3.03.2025 and effective 1.06.2025.d.That the purpose for the termination was that the Applicant needed vacant possession of the premises to undertake renovations and thereafter utilize the premises for her own use.e.That the Tenant was served with the notice after which he sought to pay rent on an annual basis and which request the Applicant opposed due to the existence of the notice to terminate tenancy.f.That the Tenant has not opposed the notice to terminate tenancy and therefore the notice has taken effect.g.That the Respondent was to continue paying the monthly rent of Kshs. 15,000/= during the pendency of the notice which he has failed to do.

The Tenant's/Respondent's Depositions

3.(a)That he is the Respondent and the occupant of the suit premises but he was not a party to the lease agreement executed on 1.01.2019.(b)That there is no documentary privity of contract between the Applicant and the Respondent as there is no evidence of the assignment of the lease to the Respondent.(c)That the Tenant acknowledged receipt of the Landlord's notice to terminate tenancy.(d)That the Tenant cannot asset that the tenancy between the parties ended by operation of the law and at the same time invoke the Tribunal's jurisdiction to compel payment of rent arrears and the eviction of the Tenant.(e)That the Tenant filed Kitale CMC Land Case No. E115 of 2025 seeking clarification as to his status vis-a-vis the suit premises but the suit was ultimately dismissed on the basis of the pendency of the instant suit at the Tribunal.(f)That the tenancy agreement for a period of ten (10) years does not give rise to a controlled tenancy and based on that instrument alone, the Tribunal would have no jurisdiction.(g)That if there is no Reference filed to oppose the notice to terminate, the Landlord's notice takes effect under Section 10 of Cap 301 and therefore the proper forum for possession is the ordinary courts and not the Tribunal.(i)That the Tenant's monetary claim fails as it is not one of the grounds in the notice to terminate tenancy.(j)That the court ought to determine at the very outset whether any tenancy exists

between the parties and if it does, whether the same is controlled.(k)That the Tenant tendered rent and any non-acceptance followed the Tenant's stance that rent should not be taken due to the termination notice.(l)That the Application is incompetent, abusive and premised on contradicting positions.

Analysis and Determination

4.The issues which arise for determination in this Application are the following;-a.Whether there exists a tenancy relationship between the parties and if it does exist, whether the same is a controlled tenancy?b.Whether the Tenant was duly served with the Landlord's notice to terminate tenancy and if so, whether he opposed the same and if not, what are the consequences of the lack of opposition thereof.c.Whether the Tenant is entitled to the orders sought in her Application.

Issue A: Whether there Exists a Tenancy Relationship between the Parties and if it does Exist, whether the Same is a Controlled Tenancy?

5.The Landlord/Applicant has deponed in her affidavit that she initially entered into a lease agreement with one Mr. Yunis Ibrahim Ali for a period of ten (10) years, with effect from 1.01.2019 to 1.01.2029. The Landlord depones that this lease was thereafter assigned to the current Tenant. The Tenant on his part states that, there is no evidence of any assignment or transfer of the rights, obligations and liabilities in the said lease to himself and therefore there does not exist any documentary privity of contract between the parties. The Tenant has also challenged the jurisdiction of the Tribunal on the basis that the tenancy agreement exhibited by the Landlord is for a period of ten (10) years and therefore outside the statutory jurisdiction of the Tribunal.

6.I have perused the said agreement and although it is for a period of ten (10) years, the same provides as follows at clause 3:-“The lease is until further notice. It is understood between the parties that only legal business shall be carried out in the leased room and that there be no subleasing to the party in the event of each party wishing to terminate the contract before the expiry of the leased period, then the terminating party shall give atleast a month's notice in written (sic) of such intention.”It is clear that the lease agreement gave rise to a controlled tenancy within the meaning of a controlled tenancy under Section 2(1) of Cap 301 as it has provisions for a termination clause other than for a breach of contract.It is not therefore true as the Tenant puts it, that the said lease agreement would deny the Tribunal the jurisdiction to hear and determine this matter.

7.The Tenant has asked the Tribunal to make the enquiry as to whether he is a Tenant of the Landlord. The basis of the Tenant's position is that there was no assignment of lease from the previous Tenant to himself. But a perusal of the pleadings show that indeed the Tenant is in occupation of the suit premises and that he pays rent to the Landlord herein. Indeed, the Tenant has insinuated that the Landlord only declined to accept rent only after the notice to terminate tenancy was served upon the Tenant. The Tenant falls shy of disclosing how he entered into the suit premises and on what basis he was paying rent to the Landlord. It is also to be noted that the

Tenant does not challenge the proprietorship of the Landlord as far as the suit premises is concerned. It cannot be that the Tenant is NO-ONE'S Tenant in a premises that does not belong to him.

8. Even assuming there was no assignment of the lease in favour of the Tenant as suggested by himself, the Tenant would still be occupying the suit premises on the basis of a lease agreement which has not been reduced into writing and in either scenario, the lease would give rise to a controlled tenancy.

9. It is further clear from the letters dated 12.4.2025 and 15.3.2025 that the Tenant herein was the Tenant of the Landlord herein and I do not think any further clarification is necessary.

10. I have also seen an affidavit sworn by the Tenant on 30.5.2025 wherein it is deposed as follows; "2: That in the year 2009, I and my business partner one Yunis Ibrahim Ali entered into a lease agreement with the defendant/Respondent in respect of the suit premises." The full text of the said affidavit clearly points to the conclusion that the Tenant herein has always been a Tenant of the Landlord herein.

11. On this issue, I do return the finding that there exists a controlled tenancy between the Tenant and the Landlord and that the Tenant Mr. Ali Noor Mohamed is a Tenant of the Respondent Ms. Christine Muthoni Muigai under the said tenancy.

Issue B: Whether the Tenant was Duly Served with the Landlord's Notice to Terminate Tenancy and if so, whether he Opposed the Same and if not, what are the Consequences of the Lack of Opposition thereof.

12. It is agreed that the Tenant was duly served with the notice of termination of tenancy. The Tenant did not refer the notice to terminate to the Tribunal by way of filing a Reference under Section 6(1) but rather chose to challenge the notice under the Kitale CMC Land Case No. E115 of 2025. The failure by the Tenant to challenge the notice had the consequence that the notice to terminate tenancy became effective on 1.06.2025 under the provisions of Section 10 of Cap 301 of the Laws of Kenya.

Issue C: Whether the Tenant is Entitled to the Orders Sought in her Application

13. Can the Tribunal issue an order for vacant possession in the circumstances? The Tenant is still in occupation of the suit premises after the expiry of the notice and the Landlord has raised issues of rent during the pendency of the notice. The Tenant has taken issue with the rent demand on the basis that it was not one of the issues raised in the termination notice. I think both parties have made their responses and submissions on this issue and therefore it is open for the court to consider it (See the case of; Odd Jobs vs vs Mubia [1970] EA 476) On the issue of rent, I am not able to tell from the material placed before me whether or not the Tenant owed rent and if so how much, but since the Tenant has himself stated that the Landlord refused to accept rent, it is only fair that the Tenant now pays all the rent previously not accepted by the Landlord.

14.The order for vacant possession is one that the Tribunal can issue in the circumstances of this case. It flows naturally from the finding that the notice to terminate tenancy has taken effect and therefore the Landlord is entitled to vacant possession. In this regard, Section 12(e) of Cap 301 provides that the Tribunal has powers inter alia;“to make orders upon such terms and conditions as it thinks fit for the recovery of possession and for the payment of arrears of rent and mesne profits which orders may be applicable to any person, whether or not he is a Tenant being at any material time in occupation of the premises composed in a controlled tenancy.”

Disposition

15.In disposing of this matter, I will therefore make the following orders;-a.That the tenancy between the parties herein is hereby terminated.b.That the Tenant will render vacant possession of the suit premises within thirty (30) days from the date of this Ruling Failing which the Landlord will be at liberty to forcefully evict the Tenant using a licensed auctioneers.c.That the Tenant will pay all rent previously declined by the Landlord.d. .That the OCS Kitale Police station will provide security and ensure compliance with these orders.e.That the Tenant will bear the costs of the Application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF JANUARY 2026.HON. CYPRIAN MUGAMBICHAIRPERSONBUSINESS PREMISES RENT TRIBUNALDelivered in the presence of Mr. Kimani for the Landlord and in the absence of the TenantCourt: Mention on 14.4.2026 for further directions on the Reference.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://new.kenyalaw.org/akn/ke/judgment/kebprt/2026/20/eng@2026-01-30>

CASE PAGE <https://chat.esheria.ai/case-law/kenya/muthoni-v-mohamed-2026>

Prepared on 29 October 2026 · Esheria