



**Mukite v Ndiema (Tribunal Case E050 of 2025)  
[2025] KEBPRT 365 (KLR) (8 August 2025) (Ruling)**

Neutral citation: [2025] KEBPRT 365 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E050 OF 2025  
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER  
AUGUST 8, 2025**

**BETWEEN**

**ELIUD SYANGU MUKITE ..... APPLICANT**

**AND**

**ROGERS KIGAI NDIEMA ..... RESPONDENT**

**RULING**

**A. Dispute Background**

1. The landlord/applicant moved this Tribunal vide a Reference under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 dated 13<sup>th</sup> May 2025 with a complaint that the tenant has constantly failed to pay rent as and when the same becomes due and payable, has violated the tenancy agreement and that the tenant has locked the suit premises to prevent access by the landlord.
2. The landlord/applicant filed a notice of motion under a certificate of urgency dated 13<sup>th</sup> May 2025 seeking eviction orders against the tenant herein as well as costs for the application.
3. The application is supported by an affidavit of even date in which the landlord deposes that the tenant has consistently breached the tenancy agreement by constantly failing to pay rent when it becomes due and owing despite several demands. A copy of the lease agreement and notice to terminate tenancy are annexed as 'ESM-1' and 'ESM-2' respectively.
4. The application is opposed vide a replying affidavit dated 23rd May 2025 in which the tenant/respondent deposes that he entered into a lease agreement with the applicant on 24th October 2023 to occupy the premises for five years from January 2024 (annexure marked RKN1).
5. That upon taking possession, he found the premises in a dilapidated condition and invested approximately KES 1,300,000 in renovations (annexures marked RKN2 a & b). He also obtained all



- necessary permits from the Kitale County Government and paid the required fees (annexures marked RKN3 a, b, c & d).
6. The tenant affirms that he has no outstanding rent arrears as of 1st May 2025 and has been paying his rent diligently, including any arrears (annexures marked RKN4 a, b, c, d & e). That on the same date, the applicant locked him out of the premises without justification despite the absence of rent arrears, prompting him to report the matter to the police (annexures marked RKN5 a & b).
  7. He alleges that the applicant breached the lease agreement by locking him out of the premises in which he had made significant investments and ignored his protest through a letter dated 12th May 2025 (annexure marked RKN6). The tenant further claims that he had engaged the services of NAW Creative for architectural and design work, but the applicant also locked them out along with their equipment (annexures marked RKN7 a & b).
  8. As a result, he asserts that the applicant is causing him economic loss and irreparable harm to his character, business brand, and income.
  9. The landlord/applicant filed a further affidavit dated 16th June 2025 in which he deposes that the lease agreement entered into in 2023 was merely a renewal, as the respondent had been occupying the premises for over ten years. He disputes the respondent's claim that the premises were dilapidated as of 24th October 2023, arguing that the respondent had been using them since 2005. He further denies that the respondent spent KES 1,300,000 on renovations and claims that the photographs marked RKN2 a-b were taken recently after he had instructed the respondent to vacate, alleging they are intended to mislead the Tribunal.
  10. The landlord explains that on 6th September 2024, after the respondent fell into rent arrears, he instructed Anne Kibe & Co. Advocates to issue a notice to terminate the tenancy. That the respondent/tenant allegedly ignored and refused to comply with the notice. Following this, the respondent reportedly made irregular rent payments and accumulated arrears, prompting the current suit.
  11. He contends that the respondent's claim of no arrears is false and that the M-Pesa messages relied upon are related to arrears payments. At the time of filing, the respondent owed him KES 120,000 in rent arrears. The landlord also accuses the respondent of refusing to vacate the premises, pay rent, and settle electricity bills. He reiterates that the rent arrears remain unpaid and continue to accrue.
  12. The applicant challenges the credibility of annexure RKN-7, dated 21st November 2023, arguing that it contradicts the respondent's claim that he engaged NAW Creative for design services, and that he had already issued the notice to vacate by then. The landlord also denies having locked the respondent out of the premises, insisting instead that the respondent locked himself out in September 2024 after the notice was served.
  13. The landlord claims that the respondent has been paying rent with arrogance and in breach of the lease terms. He expresses concern over potential loss of income should the eviction not be granted and asserts that the respondent would not suffer prejudice as he can seek alternative premises. He affirms that the application has been made in good faith and in a timely manner.
  14. The court directed the application to be canvassed by way of written submissions and both parties complied. The landlord filed his submissions dated 16<sup>th</sup> June 2025 and the tenant filed his dated 17<sup>th</sup> July 2025. We shall consider both submissions while dealing with the issues for determination.

## **B. Issues for determination and analysis**

15. The following issues arise for determination; -



- a. Whether the Notice to Terminate tenancy dated 6<sup>th</sup> September 2024 is valid.
- b. Whether the landlord is entitled to the orders sought in the application dated 13<sup>th</sup> May 2025.
- c. Who shall bear the costs of the application?

**Issue (a) Whether the Notice to Terminate tenancy dated 6<sup>th</sup> September 2024 is valid.**

16. The notice to terminate tenancy is required to comply strictly with the provisions of Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301, which provides:

“A landlord who wishes to terminate a controlled tenancy or to alter the terms and conditions thereof shall give notice in that behalf to the tenant in the prescribed form...”

17. The prescribed format is set out in Form A (First Schedule) of the Act.
18. The tribunal shall rely on the case of Manaver N Alibhai t/a Diani Boutique – vs- South Coast Fitness & Sports Centre Limited Civil Appeal No. 203 of 1994, wherein it was held as follows: -

“The Act lays down clearly in detail, the procedure for the termination of a controlled tenancy. Section 4(1) of the Act states in very clear language that a controlled tenancy shall not terminate or be terminated and no term or condition in or right or service enjoyed by the tenant of any such tenancy shall be altered otherwise than in accordance with specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the tenant. The notice must also specify the ground upon which termination is sought. The prescribed notice in form A also requires the landlord to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice.”

19. Having perused the impugned notice, it is clear that the notice dated 6th September 2024 is not in the prescribed format under Cap 301. It is therefore invalid and fatally defective.

**Issue (b) Whether the landlord is entitled to the orders sought in the application dated 13<sup>th</sup> May 2025.**

20. The landlord seeks orders to evict the tenant on the grounds that he is in rent arrears and has breached the terms of the lease. However, having already found that the Notice to Terminate Tenancy dated 6th September 2024 is not in the prescribed statutory form, the Tribunal finds that the application for eviction cannot succeed.
21. Further, on the issue of rent arrears, the tenant has presented M-Pesa receipts and annexures (RKN4 a, b, c, d & e) as proof of rent payment. On the other hand, the landlord has not produced any statement of rent accounts or any detailed ledger evidencing arrears or default.
22. Accordingly, there is no sufficient proof before the Tribunal that the tenant is in rent arrears or that the tenant has breached the lease agreement in a manner that would warrant his eviction. In any event, such relief would still be unavailable in the absence of a valid notice issued under Cap 301.

**Issue (c) Who shall bear the costs of the application?**

23. Under Section 12(1) (k) of Cap. 301, Laws of Kenya, costs of any suit before this tribunal are in its discretion but always follow the event unless for good reasons otherwise ordered. We shall order costs to the tenant/respondent.



### **C. Final Orders**

24. In conclusion, the Tribunal makes the following orders:

- a. The notice to terminate tenancy dated 6th September 2024 is declared invalid and is therefore dismissed.
- b. The application dated 13<sup>th</sup> May 2025 is also dismissed.
- c. The Landlord is at liberty to issue a fresh Notice to Terminate Tenancy strictly in accordance with the provisions of Cap 301, Laws of Kenya.
- d. The Landlord, his agents, servants, or employees are hereby restrained from interfering with the Tenant's quiet and peaceful occupation of the suit premises.
- e. Costs of KSH. 5,000 to the Tenant/Respondent to be offset against the rent account.
- f. Reference dated 13<sup>th</sup> May 2025 is settled in terms.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8<sup>TH</sup> AUGUST 2025**

**HON. JOYCE AKINYI OSODO - PANEL CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON GAKUHI CHEGE - MEMBER**

In the presence of:

Majanga for Landlord/applicant

No appearance for tenant

