



**Kimani v Gachanja (Tribunal Case E172 of 2023)  
[2024] KEBPRT 692 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 692 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E172 OF 2023  
CN MUGAMBI, CHAIR  
APRIL 18, 2024**

**BETWEEN**

**PETER KIMANI ..... TENANT**

**AND**

**JOHN MUIRURI GACHANJA ..... LANDLORD**

**RULING**

1. This matter came up for hearing on 21.03.2024 on which date Mr. Waichungo appeared for the Tenant and Mr. Mathea for the Landlord.
2. On the material date, Mr. Mathea informed the court that he had withdrawn the notice to terminate tenancy dated 15.8.2023 and served the Tenant with a notice dated 19.9.2023. it was the view of Mr. Mathea Advocate therefore that in view of the withdrawal of the notice, the Reference did not lie.
3. It was Mr. Mathea's view that the Tenant's Reference did not address itself to any specific notice and they have always proceeded on the basis that the Tenant was challenging the notice dated 19.9.2023 and forwarded to the Tenant on 21.9.2023.
4. In view of the foregoing, it was the view of the Counsel for the Landlord that the Reference may be allowed but with no orders as to costs.
5. Counsel for the Tenant, Mr. Waichungo submitted that the landlord has all along been aware that the notice being challenged was the one dated 15.8.2023 as it is the one attached to the Reference filed by the Tenant and that by the time the Landlord received the notice dated 15.8.2023 on 21.9.2023, this matter was already before the court. In the circumstances, the landlord could not claim that he only became aware of the notice dated 15.8.2023 after the filing of the Tenant's list of documents.



6. The Tenant's Reference to the Tribunal is the one dated 7.9.2023 and in its introductory paragraph states as follows;-

“In accordance with the provisions of Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), do hereby refer to the Tribunal a complaint relating to the notice to the termination of my tenancy.”

The Tenant has set out the grounds of his complaint on the face of the Reference and one of the reasons given is that the notice to terminate is defective.

7. I have perused the notice to terminate tenancy dated 15.8.2023. The notice is in the statutory form and I do not find anything defective with the notice. The Tenant upon receipt of the notice correctly informed the Landlord that he was not going to comply with the notice dated 15.8.2023 and served upon the Tenant the same day.
8. The Tenant thereafter proceeded to file a Complaint under Section 12(4) of the [Act](#) in objection to the notice to terminate tenancy. I think the tenant got it wrong here as a notice to terminate tenancy issued under Section 4(2) of [Cap 301](#) can only be challenged by way of a Reference filed under Section 6(1) of [Cap 301](#).
9. Consequently, I am of the view that the Tenant would not be entitle to costs as he clearly adopted the wrong procedure to challenge the notice to terminate tenancy dated 15.8.2023.
10. In any event, the Landlord having withdrawn the notice dated 15.8.2023, it is only fair that this matter rests and each party will bear their own costs.
11. This file is ordered closed on those terms.
12. This Ruling will apply to case Numbers E173 of 2023 and E174 of 2023 Nakuru.
13. The copies of the same be placed before those files.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18<sup>TH</sup> DAY OF APRIL, 2024.**

**HON. CYPRIAN MUGAMBI - CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

