



**Thimu v Wambugu (Tribunal Case E932 of 2023)  
[2024] KEBPRT 1558 (KLR) (11 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1558 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E932 OF 2023  
P MAY, MEMBER  
NOVEMBER 11, 2024**

**BETWEEN**

**MARY THIMU ..... APPLICANT**

**AND**

**ANTHONY KARANI WAMBUGU ..... TENANT**

**RULING**

1. The landlord approached the Tribunal by filing the reference dated 25<sup>th</sup> September, 2023 seeking eviction orders against the tenant. The landlord stated that they had issued the tenant with a notice to vacate the premises but which notice had lapsed but the tenant had not yielded vacant possession. Simultaneous with reference, the landlord filed an application under certificate seeking break- in orders and grant of vacant possession.
2. The application was premised on the grounds set out in the supporting affidavit whereby the landlord stated that they issued a notice to the tenant which was not objected to neither did he file any reference. The landlord therefore urged the Tribunal to grant them break in orders to enable them take over the premises.
3. The tenant upon being served with the pleadings duly entered appearance and filed his response in opposition to the application vide the replying affidavit sworn on 9<sup>th</sup> April, 2024. It was his contention that he had always paid rent as when it fell due and that he was only caught in arrears after he had an accident from a fall at the demised premises. He was however committed in clearing the arrears with the support of his extended family and had managed to clear the same. He therefore urged the Tribunal to dismiss the reference and the accompanying application.
4. The parties elected to canvass the application by way of written submissions. Both parties filed their submissions in support of their respective positions. I have considered the same and would proceed as follows :



5. The parties submitted to the jurisdiction of the Tribunal as they were in mutual agreement that the tenancy in question was controlled. The present dispute emanates primarily from the notice to terminate tenancy issued by the landlord dated 24<sup>th</sup> February, 2023 and which was to take effect on 1<sup>st</sup> May, 2023. The tenant has in their submissions admitted knowledge of the said notice thus it can be deemed that the same was duly served even though the tenant had failed to address the same validity of the notice in their replying affidavit.
6. The position of the law on the issue of a termination notice is now settled. The Court in *Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited*, Civil Appeal No. 203 of 1994, stated that:
 

-“The Act lays down clearly and 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.”
7. It is evident that the notice of termination of the tenancy herein was in Form A as prescribed by the Act. Further, the notice of termination of the tenancy was to take effect on 1<sup>st</sup> May 2023, being a period exceeding two months as required by the Act.
8. The Landlord has been able to prove that he served notice of termination of tenancy upon the tenant who instead of filing a reference, waited for the notice period to lapse and thus exposed himself to the provisions of Section 10 of Cap. 301, Laws of Kenya which is in the following terms:
 

“Where a landlord has served a notice in accordance with the requirements of section 4 of this Act, on a tenant, and the tenant fails within the appropriate time to notify the landlord of his unwillingness to comply with such notice, or to refer the matter to a Tribunal then subject to section 6 of this Act, such notice shall have effect from the date therein specified to terminate the tenancy, or terminate or alter the terms and conditions, thereof or the rights or services enjoyed thereunder”.
9. At this juncture, it is prudent to rehash the provisions of Section 6 (1) of the Act which clearly state as follows:
 

“A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section (5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal: Provided that a Tribunal may, for sufficient reason and on such conditions as it may think fit, permit such a reference notwithstanding that the receiving party has not complied with any of the requirements of this section.” (Emphasis provided)
10. For avoidance of doubt, Section 2(1) defines a “receiving party” as “a tenant or a landlord of a controlled tenancy to whom a tenancy notice is given”.



11. From the aforesaid provision, therefore, the recipient of a tenancy notice may elect to do one of four things. Either: -
  - a. Do nothing;
  - b. Serve an objection upon the requesting party voicing his disagreement with the changes proposed in the tenancy notice then do nothing further or;
  - c. Send an objection and lodge a reference before the tribunal for a formal determination of the dispute or;
  - d. Fail to send an objection but proceed to lodge a reference in the tribunal.
12. Where a reference is lodged, as in (c) and (d) above, the tenancy notice is suspended from taking effect pending the hearing and determination of the reference by the tribunal. Section 6(1) above makes this abundantly clear. It is only the filing of a reference which suspends time with regard to the tenancy notice. (The only aspect that serves to suspend time with regard to the tenancy notice is the filing of a reference). Any other act short of lodging a reference not even service of an objection has no effect on the running of time stipulated in the notice.
13. It is the Tribunal's position that in the absence of a reference, duly lodged in the Tribunal and served by the tenant, the contention that a controlled tenancy continued to exist even upon the lapse of the stipulated notice period is erroneous. Without the reference, the controlled tenancy comes to an end the minute the notice period specified in the notice lapses, whereupon there will be no longer a Landlord/Tenant relationship.
14. Having failed to file a reference to the said notice, this Tribunal cannot interrogate whether the reasons for termination given by the Landlord in her notice were justified or not.

### **Disposition**

15. In light of the findings above, the following orders commend itself;
  - a. The notice of termination dated 24<sup>th</sup> February, 2023 is upheld.
  - b. The landlord's reference dated 25<sup>th</sup> September, 2023 is allowed to the extent that the tenant shall yield up vacant possession of the demised premises by 1<sup>st</sup> December, 2024.
  - c. The tenant shall clear any outstanding rent arrears and utility expenses incurred within 7 days from the date hereof. In default the landlord shall be at liberty to commence any lawful recovery process without further reference to the Tribunal.
  - d. The OCS Kamukunji Police Station to ensure compliance with the above orders where necessary.
  - e. The landlord is awarded costs assessed at Kshs. 25,000/-

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**HON. PATRICIA MAY - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Ng'ang'a for the Tenant in the absence of the Landlord.

