



**Mwita v Njagi & another (Tribunal Case E017 of 2023)
[2023] KEBPRT 1342 (KLR) (10 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1342 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E017 OF 2023
M MAKORI, MEMBER
NOVEMBER 10, 2023**

BETWEEN

MURIUKI MWITA APPLICANT

AND

ONESMUS NJAGI 1ST RESPONDENT

JOHN MWITA 2ND RESPONDENT

RULING

1. The Tenant/Applicant approached this court vide application dated 3/3/2023 seeking to bar the Respondent from evicting him from the premises on L.R Embu/Municipality/1112/36 and supported by the affidavit dated 3/3/2023.
2. That the application was opposed *vide* a Replying Affidavit dated 8/5/2023 and sworn by Onesmus Njagi, John Mwita.
3. The Tenant/Applicant is disputing the Notice of Termination dated 23/11/2022 and filed in this Court on the same day and where the Tenant was supposed to clear an arrear of Kshs 559,000/=
4. The grounds adduced by the Respondent for issuing the said Notice is that the Respondent has failed to pay rent of Kshs 35,000/= in about three years and which as per the sworn affidavit is indicated as Kenyan Shillings Five Hundred and Thirty-Four Thousand (Kshs 534,000/=).
5. That I have noticed from the Tenant's application that the amounts demanded is not disputed and what is disputed is the validity of the notice, in my mind therefore the amounts claimed stands.
6. From the totality of the pleadings filed by the parties, the single most issue for determination is Whether the Landlord's notice of termination of Tenancy dated 23/11/2022 and to take effect on 1/2/2023 is lawful and valid.



7. In addressing this issue, I shall consider two aspects: the formal requirements of a notice for termination of a tenancy agreement and the Landlord's grounds for termination of the tenancy.
8. For formal requirements of notice of termination of a tenancy I am guided by section 4(2) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 Laws of Kenya (hereinafter referred to as the "Act") provides that; -

“A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.”
9. Additionally, Section 4(4) provides that no tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, unless the terms and conditions of the tenancy provide for a period exceeding two months or the parties to the tenancy agree in writing to a lesser period of notice.
10. The two requirements therefore for a valid notice of termination of the tenancy is first, that the notice shall be in the prescribed form and secondly, that the notice shall not take effect until after expiry of two months, or such notice period as may be agreed by the parties. This was emphasized in the case of *Munaver N Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited* [1995] eKLR, where the Court of Appeal at Mombasa in finding that the notice of termination of the tenancy was void for failing to comply with Section 4 of the Act stated as follows;

“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 grounds on 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.”
11. Based on the evidence tendered before this Honourable Court, it is evident that the parties in their agreement had a provision for the period of notice required before termination of the tenancy agreement. As such, section 4(4) of the Act as mentioned above applies, thus the default notice period for termination of the tenancy herein is two months.
12. The notice to vacate was issued by the Landlord on 23/11/2022, and required the Tenant to vacate the premises by 1/2/2023. I note that the duration of the notice above the two months' period as prescribed by the Act therefore compliant to the requirements of the Act.
13. Additionally, according to Section 4(2) mentioned above, the Notice of Termination of tenancy should be the prescribed form, specifically Form A, as provided for in the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) \(Tribunal\) \(Forms and Procedure\) Regulations, 1966](#).
14. The Landlord's notice of termination of the tenancy was in Form A as prescribed by the Act. The notice of termination of the tenancy herein therefore meets the requirement of the Act with regard to being in the prescribed form.



15. According to Form A as provided in the Regulations above mentioned, the Landlord's notice to terminate the terms of the Tenancy herein should have specified;
 - a. The Landlord's premises occupied by the Tenant;
 - b. The duration of the notice of terminating the tenancy and the date when the notice is to take effect;
 - c. The grounds for termination of the tenancy;
 - d. The requirement that the Tenant should within one month notify the Landlord in writing whether or not the Tenant agrees to comply with the notice as from the date of receipt of the notice.
16. Bearing in mind that the notice of termination of the tenancy by the Landlord dated 23/11/2023 was in the prescribed form, it is evident that the Tenant failed to comply with the substance of the notice of termination of the tenancy without proper notification.
17. For Grounds for termination of the tenancy by the Landlord I am guided by the provision of section 4(1) of the Act provides that no tenancy shall be terminated, or no term or condition, or right or service enjoyed by the tenant shall be altered otherwise than in accordance with the provisions of the Act.
18. The Act further provides for the grounds on which the Landlord may seek to terminate the tenancy in Section 7. The grounds stated under this provision and which are applicable herein include;
 - i. that the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable;
 - ii. that the tenant has committed other substantial breaches of his obligations under the tenancy, or for any other reason connected with the tenant's use or management of the premises comprised in the tenancy; and
 - iii. that on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises;
19. In this matter, the Landlord issued a notice of termination of the tenancy to the Tenant, dated 23/11/2022. In the said Notice, the grounds for termination of the tenancy as specifically stated were that the Tenant had "continuously failed to follow our terms of engagement in matters of rent payments and had an accrued rent of Kshs 559,000/=
20. It is trite law that he who alleges must prove. This is in accordance with the Evidence Act of Kenya in Section 107, which places a burden of proof on the person who desires any court to give judgment as to any legal right or liability, which is dependent on the existence of facts, which he asserts.
21. I am satisfied that the Notice to terminate the tenancy dated 23/11/2022 and to take effect on 1/2/2023 is in the prescribed form and thus legal and valid.
22. In the upshot and based on the foregoing, the Tribunal makes the following orders;
 - a. The Tenant's references dated 3/3/2023 are hereby dismissed with costs.



- b. The tenant shall pay in full all the rent owing of Kenyan Shillings Five Hundred and Thirty-Four Thousand (Kshs 534,000/=) to the Landlord in respect of the suit premises within the next thirty (30) days hereof failing which the landlord shall be entitled to levy distress against him

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10TH DAY OF NOVEMBER 2023

HON. MIKE MAKORI (MR.)

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

