



**Minyanji & another v Lazaro t/a Makwa Shop (Tribunal Case
E226 of 2023) [2023] KEBPRT 1126 (KLR) (4 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1126 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E226 OF 2023
M MAKORI, MEMBER
DECEMBER 4, 2023**

BETWEEN

MOHAMED MUNIR MIYANJI 1ST LANDLORD

YASIN ABDULLA MINYANJI 2ND LANDLORD

AND

LAZARO T/A MAKWA SHOP TENANT

RULING

1. The Landlords/Applicants filed application dated 8/9/2023 seeking to terminate Tenancy Agreement dated 19/6/2023 with effect from 1/9/2023. The application was opposed vide a Replying Affidavit dated 12/10/2023 and a Notice of Preliminary Objection dated 12/10/2023.
2. The Respondent has stayed on the shop located on Plot Number Mombasa/Block XVII/914 being shop number 1 for about 17 years and the Landlord/Applicant now want to occupy the shop for their own personal utility.
3. From the pleadings filed, I discern the key issue for determination is whether the Notice to Terminate Tenancy dated 19/6/2023 is valid and what is the appropriate remedies available. To address this issue I would like to focus on the provisions of *Shops, Hotels and Catering Establishments) Act* on termination of a tenancy.
4. Section 7 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* establishes the grounds upon which a landlord can terminate a tenancy as follows;
 1. Where under Section 4 of this *Act* served a notice of termination of a controlled tenancy on the tenant, the grounds on which the landlord seeks to terminate such tenancy may be such of the following grounds as are stated in the aforesaid notice—



- a. where, under the tenancy under which the tenant holds for the time being, the tenant has any obligations in respect of the repair and maintenance of the premises comprised in such tenancy, that the tenancy ought to be terminated in view of the state of repair of the premises, being a state resulting from the tenant's failure to comply with the said obligations;
- b. 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;
- c. 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;
- d. that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his retail trade or business or enterprise and to the situation and extent of, and facilities afforded by, the premises comprised in the tenancy;
- e. that the tenancy was created by the subletting of part only of the premises comprised in a superior tenancy of which the landlord is the owner of interest in reversion expectant on the termination of that superior tenancy, and that the aggregate of the rents reasonably obtainable on separate lettings of such premises in parts would be substantially less than the rent reasonably obtainable on a letting of such premises as a whole, and that on the termination of the tenancy the landlord requires possession of such premises as a whole for the purpose of letting or otherwise disposing of the same as a whole;
- f. 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;
- g. subject as hereinafter provided, that on the termination of the tenancy the landlord himself intends to occupy for a period of not less than one year the premises comprised in the tenancy for the purposes, or partly for the purposes, of a business to be carried on by him therein, or at his residence.

5. In *Oscar Luvaha (Explore Auto Valuers and Assessories Limited) v Babi Investments & another* [2021] eKLR where the court in citing the Court of Appeal decision noted that;

“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.”

6. From above cited provision of the law and authority, it is without a doubt that the Notice to Terminate dated 19/6/2023 is in the prescribed form, the Respondent was given a duration of two months after which he was supposed to pave way Landlord by 1/9/2023.

7. Further Section 7(1) (f) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Chapter 301 Laws of Kenya Act provides that some of the grounds upon which the Landlord may seek to terminate tenancy include;

(f) 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.

8. It was also stated in the case of; *Fisher v Taylors Furnishing Stores Ltd* [1956] 2 All ER 78, that; -

There must, therefore, be an intention and it must be an intention which in point of time is related to the termination of the current tenancy. It seems to me that the intention must be to do one of the following things:

- (i) to demolish the premises comprised in the holding; or
- (ii) to reconstruct the premises comprised in the holding; or
- (iii) to demolish a substantial part of the premises comprised in the holding; or
- (iv) to reconstruct a substantial part of the premises comprised in the holding; or
- (v) to carry out substantial work of construction on the holding; or
- (vi) to carry out substantial work of construction on a part of the holding.

If the landlord prove an intention to do one of those things, and to do it on the termination of the current tenancy, he must then prove that he could not reasonably do it without obtaining possession of the holding.

9. Based on the above evidence by the Landlord it is the contention of this Tribunal that the Landlord has sufficiently shown that there exist a firm and real intention terminate the tenancy relationship between the Respondent and themselves.

10. On this basis therefore, I find that the Landlords/Applicants have convinced this Honourable Court that they require vacant possession of the suit premises for their own utility.



11. Based on the foregoing, the Tribunal makes the following orders that the Tenant's references dated 8/9/2023 is hereby allowed in the following terms;
- a) The Tenant/Respondent shall grant the Landlords/Applicant vacant possession of the premises within 30 days' failure to which the Landlord is at liberty to reclaim the suit premises.
 - b) That the OCS Mombasa Tononoka Police Station to ensure compliance with this orders.
 - c) Each party shall bear their own costs

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 4TH DECEMBER, 2023

HON. MIKE MAKORI (MR.) - MEMBER - 4. 12.2023

In the presence of;

Mr. Chege holding brief for Mr. Mwanzia for the Tenant/Respondent

Miss Sidinyu for the Landlord/Applicant

