



**Murianki t/a Muthingati Enterprises v Waithaka (Tribunal Case 179B of 2012)
[2024] KEBPRT 1573 (KLR) (Commercial and Tax) (15 November 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1573 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
COMMERCIAL AND TAX
TRIBUNAL CASE 179B OF 2012
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
NOVEMBER 15, 2024**

BETWEEN

JULIUS MURUNGI MURIANKI T/A MUTHINGATI ENTERPRISES . TENANT

AND

HANNAH NGARU WAITHAHA RESPONDENT

JUDGMENT

A. Dispute Background

1. The Respondent herein served the tenant with a notice dated 3rd February 2012 seeking termination of his tenancy with effect from 1st May 2012 on the grounds that she intended to occupy the demised premises for family business for a period not less than one year for the purpose of a business to be carried by herself therein.
2. Being opposed to the said tenancy notice, the tenant filed this reference under section 6(1) of Cap 301, Laws of Kenya on 12th March 2012. The matter seems to have taken turns and twists leading to a delay of more than 12 years in this Tribunal.
3. On 31st July 2024, a consent order was recorded to the effect that all documents filed by the parties be admitted as their evidence without calling the makers. Parties agreed to file and exchange written submissions within the timelines given with the Respondent starting. The Respondent's submissions are dated 15th August 2024 while the tenant's submissions are dated 6th September 2024.

B. Issues for determination

4. The following issues arise for determination; -
 - a. Whether the notice to terminate tenancy dated 3rd February 2014 is valid.



- b. Whether the Respondent is entitled to vacant possession of the suit premises.
- c. Who shall bear the costs of the case?
5. We intend to deal with the first two issues together and the final one alone.
6. The Respondent submits that Section 4 (2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 Laws of Kenya provides for termination of and alteration of terms and conditions of controlled tenancy as follows: -
- “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.”
7. In line with Section 4 (2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, (hereinafter “the Act”), the Notice was to take effect from 1st May, 2012. The grounds of termination of the tenancy as stated in the notice was that the Respondent as landlord intended to personally occupy the premises to carry out a family business for a period of not less than one year.
8. The Respondent relies 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.”
9. The Respondent submits that the notice of termination of the tenancy herein was in Form A as prescribed by the Act. The notice was to take effect on 1st May, 2012, being a period exceeding two months as required by the Act. The Respondent therefore submits that she followed the correct procedure when issuing the notice and gave the proper timelines as required by the law. It is therefore submitted that the notice was lawful and valid.
10. The Respondent also cites Article 40 of *the Constitution* of Kenya, 2010 which guarantees the right of every person either individually or in association with others, to acquire and own property. This includes the right of a proprietor of land to enjoy and benefit from the use of such property and to deal with the property as they please within the confines of the Law.
11. Section 7 of the Act, stipulates the grounds upon which a Landlord may seek to terminate a tenancy. One of the grounds as enshrined in Section 7 (1) (g) of the Act is:-
- “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.”



12. It is therefore submitted that the Respondent had indicated in the notice of termination of the tenancy dated 3rd February, 2012 that she intended to occupy the suit premises upon termination of the tenancy to carry out a family business.
13. She cites Section 107 of the Evidence Act Cap 80, Laws of Kenya, which provides that: -

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”
14. The Respondent filed an order list from Dahua Flagship Store which was translated from the Chinese language to English language and filed before this Tribunal. The order list was intended to show that the items ordered by the Respondent were for the business she intended and was carrying out. She also filed bank statements from June to October 2019 to prove that she possessed the requisite funds to conduct the business.
15. She further relies on the authority of James Kariuki Kithinji versus Dominic Ntongai [2020] eKLR, where the Court in noting that the Landlord had established a clear intention to commence a business in the suit premises stated as follows:

“.....The act does not state that a detailed account should be given regarding the nature of the intended use of the premises by the landlord. It was therefore sufficient for the respondent to demonstrate that he intended to put up a business and use the suit premises...As regards the first issue, I find that the respondent gave evidence before the tribunal stating that he had registered a company and was intending to carry out a business. He was to use the suit premises as an office and a show room for the products he was to be selling. He provided details of his registered company....”
16. The tenant on the other hand submits that under Section 4 of Cap 301, the landlord is granted a right to alter or to terminate a controlled tenancy strictly in compliance with the provisions of the Act. Section 2 defines a “landlord” in relation to a tenancy to mean-

“... the person for the time being entitled, as between himself and the tenant, to the rents and profits of the premises payable under the tenancy”.
17. It is further submitted and we fully agree that the person so described is the one who Section 4(2) of the Act gives the termination rights. It states that “a landlord who wishes to terminate”. No other person, other than a landlord, has power to terminate or to alter terms of a controlled tenancy. The Act does not empower an agent of the landlord or a son or daughter of a landlord to issue such a notice.
18. In the instant case, the tenancy notice dated 3/2/2012 and filed in this Tribunal together with the Reference on 12/3/2012 was issued by Hannah Ngaru Waithaka who described herself as the landlord.
19. The tenant has exhibited documents as per the list dated 29/1/2019 filed on 30/1/2019 (sic) (as per Tribunal date stamp but should have been year 2020 showing that the landlord is a limited liability Company called Mago Investments Ltd. That Company is shown to receive rent from the tenant and also service charge.
20. Hannah Ngaru Waithaka did not purport to give the notice on behalf of the landlord and did not exhibit any authority by the landlord to issue such a notice. No resolution by the landlord to terminate the tenancy or authorizing her to act for it nor a power of attorney therefor has been exhibited. It is not



known whether she held any position in the landlord Company. It therefore follows and we so hold that the notice is not in compliance with Section 4 of the Act. It is null and void.

21. We agree with the tenant's submissions that the bundle of documents she has sought to rely upon tell a different story. Whereas, she gave notice in the year 2012, her documents are dated year 2018. None of them names her or the known landlord as the ordering entity. One of them has names of John as the customer. It is for the year 2018. The documents do not make sense in that Hannah is not the ordering customer. She had no orders in year 2012 or soon after the notice, majority of the documents are blank. They do not identify the customer nor the receiver. Simply put, they do not support a case for intention to do business in the leased premises by the landlord. They relate to third parties who have no demonstrated any relationship with the known landlord.
22. In any event, so many years have passed since 2012 and neither Hannah nor the true landlord offered acceptable further evidence of any intention to use the premises for business. Such additional evidence, even if coming as late as now, would have enabled the Tribunal to discern the intention to do business and aid in exercise of this Tribunal's discretion. The case of James Kariuki cited by the Respondent required her to demonstrate by evidence that she intends to carry out business in the suit premises.
23. Furthermore, the bank statements do not belong to Hannah they are for Mago Investments Ltd. Mago Investments Ltd has not put any evidence of any business it intends to carry out in the suit premises. The invoices annexed are not related to it at all.
24. We therefore find and hold that the tenancy notice is invalid having been issued by a stranger to the tenant. Consequently, the Respondent is not entitled to vacant possession in respect of the suit premises.

Issue (c) Who shall bear the costs of the case?

25. 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 Hannah Ngaru Waithaka to bear the costs of the Reference as she had no authority to issue the notice to terminate the tenant's tenancy on behalf of the true landlord.

C. Orders

26. In conclusion, the following final orders commend to us; -
 - a. The notice to terminate tenancy dated 3rd February 2012 is declared invalid and of no legal effect.
 - b. The tenant's reference is hereby allowed with costs to be taxed by the Deputy Registrar of this Tribunal and met by Hannah Ngaru Waithaka personally.

It is so ordered.

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15TH DAY OF NOVEMBER 2024.

HON GAKUHI CHEGE - PANEL CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

HON. JOYCE AKINYI OSODO - PANEL MEMBER

In the presence of:



S.M Chege for the Landlord

Kaburu for the Tenant

