



**Kinyanjui v Mburu & another (Tribunal Case E888 of 2022)
[2023] KEBPRT 11 (KLR) (20 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 11 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E888 OF 2022
A MUMA, VICE CHAIR
JANUARY 20, 2023**

BETWEEN

SAMUEL KINYANJUI TENANT

AND

ANNE NJERI MBURU & JANE WAMBAIRE LANDLORD

RULING

A. Parties and Representatives

1. The Applicant Samuel Kinyanjui is the Tenant and rented space on the Suit Property located at Shujaa for the business. (hereinafter known as the ‘Tenant’)
2. The Tenant/Applicant appears in person in this matter.
3. The Respondent Anne Njeri & Jane Wambaire are the Landlords and rented space for the business in the suit property. (hereinafter the ‘landlord’)
4. The firm of PK Kivuva & Associates represent the Respondent/Landlord in this matter.

B. The Dispute Background

5. The Tenant filed a Reference and a Notice of Motion application dated October 3, 2022 under section 12 (4) of the *Landlords and Tenants (Shops, Hotels and Catering) Establishments Act* Cap 301. The Tenant was seeking that this Honourable Tribunal restrain the Landlord from evicting or harassing them as well as from interfering with their quiet possession of the premises.

C. The Tenant’s Claim

The Tenant filed a Reference and a Notice of Motion Application dated October 3, 2022 to which they obtained interim reliefs.



6. The Tenant also filed a Further Affidavit dated November 30, 2022.

D. The Landlord's Claim

7. The Landlord has filed a Replying Affidavit dated November 16, 2022.

E. List of Issues For Determination

8. It is the contention of this Tribunal that the issues raised for determination are as follows;

I. Whether the Termination Notice Issued by the Landlord was valid?

F. Analysis and Findings

Whether the Termination Notice Issued by the Landlord was valid?

9. Section 4(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya provides that;

4(2) 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.

4(4) No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party

10. The above provision requires that before the Landlord can terminate or alter the terms of a controlled tenancy, they must issue a notice of not less than two months to the Tenant.

11. In the present case, the Landlord issued the Tenant with a Notice to terminate tenancy dated May 24, 2022 and the same was to take effect on August 24, 2022. According to the provisions of cap 301 above, the said notice is deemed to be valid since it accorded the Tenant the required two months period.

12. The Tenant avers that the Landlord had not issued them with a Notice prior to the reminder that they sent on October 1, 2022. The Tribunal finds issue with this since the same Notice was served on the Chief and on the following date after service, the Chief called the parties May 26, 2022 to try and amicably resolve the issues between them. A letter from the chief is annexed evidencing the same. Samuel failed to turn up is the comment written by the chief on the letter. He only concedes to a letter dated August 15, 2022 from the chief which he attended meaning his address of service was well known to the chief.

13. In light of the foregoing the Tribunal holds that the Notice issued by the Landlord is valid and duly served and not opposed on time or at all in the circumstances I need not go into the other reasons which clearly by a casual look indicate the landlord tenancy relationship had degenerated to an extent that it was not tenable anymore, the Tenant should grant vacant possession of the premises back to the Landlord.

G. Orders

- a. The upshot is that the Tenant's Reference and Application dated October 3, 2022 is hereby dismissed in the following terms;
- b. The Tenant shall hand over Vacant Possession of the premises to the Landlord within 30 days.
- c. OCS Mawe Mbili Police Station to assist in compliance.



d. Each party shall bear their own Costs.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 20TH DAY OF JANUARY 2023 IN THE PRESENCE OF KINYANJUI THE TENANT IN PERSON AND KYALLO FOR THE RESPONDENTS.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

