



**Kimathi & another v Njeru (Tribunal Case E594 of 2024)  
[2024] KEBPRT 1334 (KLR) (14 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1334 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E594 OF 2024  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
AUGUST 14, 2024**

**BETWEEN**

**JULIUS KINYUA KIMATHI ..... 1<sup>ST</sup> TENANT**

**MUSA MWENDA ..... 2<sup>ND</sup> TENANT**

**AND**

**KELLEN ELLY NJERU ..... LANDLADY**

**RULING**

1. The Tenant/Applicant commenced these proceedings by the Reference dated 24<sup>th</sup> May 2024. The same was founded on Section 12(4) of the Landlord and Tenants (Shops, Hotels and Catering Establishments) Act (Cap. 301) hereinafter referred to as “the Act”. The Tenant’s complaint was that:-
  - a. The Landlady served the Tenant with a notice of termination of Tenancy directing the Tenant to vacate on or before 31<sup>st</sup> May, 2024.
  - b. The purported notice was not in the prescribed form as required under the Act.
  - c. The purported notice did not state any grounds upon which the tenancy is being terminated as required under the Act.
  - d. The notice was issued in bad faith as it failed to consider that the tenants have paid for and procured a current Alcoholic Drinks license and other business permits allowing them to operate a bar and restaurant on the property which run until at least 31/12/2024.
  - e. The Tenants have fulfilled all their obligations under the agreement including paying the full rent due.



- f. The Tenants have attempted to approach the landlady in a bid to amicably resolve the matter but the landlady has maintained the illegal notice and demand for them to vacate by the 31<sup>st</sup> May 2024.
  - g. The Tenants are therefore apprehensive that the landlady will evict them on or before the 31/5/2024 when the notice expires.
2. Also filed with the reference was the notice of motion application dated 24/5/2024. The same prayed that the notice of termination dated 11/5/2024 be stayed and that the Tenant be allowed quiet possession of the premises pending the hearing and determination of the application and suit herein.
  3. The Tenant eventually filed their submissions dated 19<sup>th</sup> July 2024 and list of authorities of the same date. The case for the Tenant is that:
    - a. That the demised premises were rented out to their brother and brother-in law respectively namely Gerald Muriithi and his wife Christine Kathuru who are now deceased in the year 2017.
    - b. Since January, 2022, the Applicants have been running the business previously run by the deceased's as the Tenants of the respondent and paying rents as they fell due.
    - c. Vide annexures "JK1" and "JK2," the landlady by the purported notice to vacate required the Applicant's to vacate the demised premises by the 31/5/2024.
    - d. The purported termination notice was not compliant with the law and was fatally defective.
    - e. The notice ignored the fact that the Applicants were licensed to operate their business until 31/12/2024.
    - f. They should be allowed quiet possession of the demised premises.
  4. On her part, the landlady filed the notice of preliminary objection dated the 10<sup>th</sup> June 2024. The same is on the following grounds:-
    - a. The notice of motion application is contrary to the provisions of Section 2 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#).
    - b. The business premises Rent Tribunal therefore lacks the jurisdiction to hear and determine this matter.
  5. The Landlady also filed the submissions dated 21<sup>st</sup> June 2024. The case for the landlady is that:-
    - a. She was the owner of the Land on which the demised premises were erected namely L.R No. 12715/3098 on Katani Road- Syokimau.
    - b. The Applicants have rented a container from which they run the business of wines and spirits.
    - c. She had leased the demised premises to one Gerald Muriithi in 2020 and on passing on she rented the same to his wife who is also deceased.
    - d. Later on, she leased the premises to the Applicants who are the relatives of both the deceased and who took up the business on or about the year 2022.
    - e. She never entered into any written tenancy agreement with the Applicants but that they took up the tenancy and continued to pay rent.
    - f. She entered into an oral agreement with the Applicants to the effect that when she will need to develop the premises, she would only require to give a one (1) month notice.



- g. This court had no jurisdiction to preside over this matter as the relationship between the parties is not a controlled Tenancy.
  - h. The landlady therefore sought that the Applicants reference and Application both dated 24/5/2024 be dismissed with costs.
6. We have keenly perused the pleadings by the parties and the submissions thereof and are of the view that we are able to determine all the issues in the notice of preliminary objection dated 10<sup>th</sup> June 2024 together with the application and reference both dated 24<sup>th</sup> May 2024.
  7. All the issues raised are issues of law and the principles governing their application are now largely settled. In that regard, we find that the issues that will determine this matter are the following:-
    - A. Whether the notice of preliminary objection dated 10<sup>th</sup> June 2024 has merit.
    - B. Whether the Tenants/Applicants Application dated 24/5/2024 has merit.
    - C. Who should bear the costs of the suit.

**Issue No. A- Whether the notice of preliminary objection dated 10<sup>th</sup> June 2024 has merit.**

8. Section 2(1) of the Act provides that:-
 

“controlled Tenancy means a tenancy of a shop, hotel or catering establishment

  - a. Which has been reduced into writing, or
  - b. Which has not been reduced into writing and which-
    - 1. Is for a period not exceeding five years, or.....”
9. In this matter, the respondent has admitted the following:-
 

“That the respondent never entered into a written agreement with the Applicants as was the case with her former Tenant. The Applicants however continued to pay rent and occupy the premises previously occupied by their kin”

In our view, that sweeping statement looked against the evidence by the Applicant brings the relationship between the parties squarely to that of a landlord and Tenant and within the jurisdiction of this court.
10. There is also no contention that the applicants have been paying rent and that the Respondent has been receiving the same. Section 2(1) of the Act further defines a landlord as:-
 

“In relation to a tenancy means the person for the time being entitled as between himself and the Tenant, to the rents and profits of the premises payable under the terms of the tenancy”.
11. The Act continues to define a Tenant as:-
 

“In relation to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding, and includes sub-tenants”.
12. It is therefore clear in our view that the respondent and the applicants have been in a landlord and Tenant relationship since on or about the year 2022 and which falls under the governance of Cap. 301 and therefore within the jurisdiction of this Tribunal.



13. The Respondent has also argued that the Applicants had no locus standi to bring this matter to court. Her contention is that the business belonged to the late Gerald Githinji and his late wife and that the Applicants had not taken out letters of administration thereof.
14. To answer this issue, we cannot find any evidence that the Applicants were operating this business on behalf of the late Gerald Mureithi and his deceased wife. The landlady in her submissions clearly indicated that she entered into an oral tenancy agreement with the Applicants and that they occupied and run their businesses in the premises. We cannot find where the need to file succession proceedings on relation to the tenancy herein could arise from.

**Issue No. B Whether the Tenant's application dated 24/5/2024 is merited.**

15. Section 4(2) of 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”.

16. Further Section 4(4) of the Act 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 as shall be specified therein.

17. This being a controlled tenancy, the respondent was required to issue a notice in the prescribed form pursuant to Section 4(2) of the Act and Regulation 4(1) of the Regulations to the Act. She was further required to give and provide the grounds for such termination as provided for under Section 7 of the Act and finally any notice issued required to only take effect after two (2) clear calendar months pursuant to Section 4(4) of the Act.

18. On the face of it, the respondent failed in all fronts to issue a lawful termination notice. The purported notice through her phone by through the short message service (sms) was short of the requirements of the law. The tenants were also required to deliver vacant possession within 19 days of the notice which was unconscionable and in breach of the law.

19. In our determination that the respondents purported notice of termination is unlawful, we rely on the locus classicus case of Fredrick Mutua Mulinge T/A Kitui Uniform – vs- Kitui Teachers Housing Co-operative Society Ltd (2017) e KLR where it was held that:-

“It is clear from the foregoing authorities that the tenancy notice dated 28<sup>th</sup> June 2014 was null and void for failing to give the appellant two months notice as required under the Act and as such was of no legal effect life could not be breathed into the defective notice by the letter dated 1/7/2014 through which the respondent purported to amend the effective date of the notice. The letter was not a notice in the prescribed form provided for under the Act”.

20. The court of appeal has also weighed in on the question of the validity of a termination notice in the case of Manaver N. Alibhai T/A Diani Boutique – vs- South Coast Fitness and Spar Centre (1995) eKLR where the court held that:-

“The Act lays down clearly and in detail, the procedure for 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”.

21. We therefore find the purported notice of termination dated 11<sup>th</sup> May 2024 and all the other purported notices by the respondent to the applicants to be unlawful and of no legal effect nor consequence.

**Issue No. C- Who should bear the costs of this suit.**

22. As alluded to, the determination on the notice of preliminary of objection dated 10/6/2024 and the application dated 24/5/2024 also resolves the issues in the reference dated 24/5/2024. From our determinations herein before, it is clear that the Applicants have succeeded in their suit and that the Respondents defence has failed. We therefore take regard to the provisions of Section 27 of the [Civil Procedure Act](#) and grant costs to the applicants.
23. In the final analysis, the orders that commend to us are the following:-
- a. That the notice of preliminary objection dated 11/6/2024 is dismissed.
  - b. The application and reference both dated 24/5/2024 are allowed to the effect that the Applicants shall be allowed quiet enjoyment of the demised premises known as Mpambe Gardens Bar and Restaurant situate within Plot No. 12 along Katani Road and on LR No. 12715/3098 Katani Road Syokimau.
  - c. That the respondent shall pay costs to the applicants assessed at Kshs.20,000/- to be offset against rent payable to her.

Those are the orders of the court.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14<sup>TH</sup> DAY OF AUGUST 2024.**

**HON. NDEGWA WAHOME MBS HON. JOYCE MURIGI - PANEL CHAIRPERSON MEMBER  
BUSINESS PREMISES RENT TRIBUNAL**

Ruling delivered in the presence of Mr. Muriungi for the Tenants/Applicants and no appearance for Mr. Ocheng for the Landlord.

**14<sup>TH</sup> AUGUST 2024**

