



**Bruce Mutuku t/a Diani Data Tour & Travel Agency v Resto Estates Limited  
(Tribunal Case E189 of 2023) [2024] KEBPRT 820 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 820 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E189 OF 2023  
CN MUGAMBI, CHAIR  
JUNE 7, 2024**

**BETWEEN**

**BRUCE MUTUKU T/A DIANI DATA TOUR & TRAVEL  
AGENCY ..... APPLICANT**

**AND**

**RESTO ESTATES LIMITED ..... RESPONDENT**

**RULING**

1. The Tenant's notice of preliminary objection dated 27.2.2024 is brought on the grounds that;-  
"The Landlord's notice dated 25.5.2023 to the Tenant is defective and bad in law. The said notice should be struck out with costs to the Tenant."
2. The Tenant's Objection to the termination notice is that the tenancy between the parties is a month to month tenancy and the Landlord's notice which seeks to terminate the tenancy is defective because it did not give the Tenant two clear months and was also not in the prescribed form and therefore contravenes the clear provisions of Section 4(2) and 4(4) of [Cap 301](#).
3. The Landlord has submitted that the Preliminary Objection by the Tenant is an abuse of the process of court and has been filed at a time when the court had ordered the Reference herein to proceed to full hearing.
4. The Landlord has also submitted that the Preliminary Objection ought to be dismissed as it is not pegged on any relevant law.
5. It is further submitted by the Landlord that the termination notice dated 25.5.2023 was rightly issued to the Tenant pursuant to the Honourable court's judgment delivered on 5.05.2023 in the case of BPRT No. E75 of 2016 [Ashburton Grove Ltd vs Bruce Mutie Mutuku](#) and the orders in the said suit have never been set aside.



6. The Landlord has also submitted that the Tenant has vacated the premises and the suit by the Tenant is unsustainable and an academic exercise.
7. It is also submitted the suit premises has changed hands and has been given out to another Tenant.
8. The Landlord has finally submitted that the Preliminary Objection by the Tenant ought to be dismissed with costs.
9. The only issue that arises for determination in this Preliminary objection is whether the same is merited and therefore whether it ought to be allowed.
10. The notice dated 25.5.2023 addressed to the Tenant by the Landlord herein is brought on the grounds;-
  - i. As per the orders of the court
  - ii. Nonpayment of rental arrears to the tune of Kshs. 2,249,400/=.
  - iii. Nonpayment of service charge.

The notice gave the Tenant one month to vacate the suit premises effective 01.06.2023 to 30.06.2023. The Tenant has an issue with the length of the notice and the failure of the notice to comply with the statutory form required of termination notices under Section 4(2) of [Cap 301](#).

11. As regards the length of the notice, the notice has provided at paragraph 3 thereof as follows;-

“Kindly take note that after the expiry of the 30 days notice period, should you be in occupation of the premises, the Landlord will proceed to take possession of the said premises.”
12. The Landlord seems to have pegged the thirty (30) days in its notice to the court Ruling delivered on 05.05.2023 when the court ordered as follows;-

“(d) That the Landlord is granted leave to issue a fresh notice of termination of tenancy against the Tenant within thirty days of this Ruling if it so desires.”

The above order was made pursuant to the provisions of Section 9(3) of Cap 301 and was not meant and cannot be construed to substitute Section 4(2) of Cap 301. Section 9(3) of [Cap 301](#) provides as follows;-

- “Where a Tribunal has made a determination upon a Reference, no further tenancy notice shall be given in respect of the premises concerned which is based on any of the matters affected” by the determination-
- a. In the case of an assessment of rent, until after the expiration of two years OR
  - b. In any other case, until after the expiration of twelve months.”

After the date of the determination, unless the Tribunal at the time of the termination specifies some shorter period.

13. It is therefore clear that the time the Tribunal shortens under Section 9(3) is the time within which a fresh notice can be served upon the Tenant and not the length of the notice itself. Section 9(3) does not in any way affect the two months’ period required under Section 4(4) of [Cap 301](#) of the Laws of Kenya.
- In this respect, the Landlord could not use the orders issued on 05.05.2023 to shorten the length of the termination notice from a period of two months to one month.



14. The Tenant has also challenged the notice to terminate tenancy on the basis that it is not the statutory form required under Section 4(2) of the Act. I have perused the notice and it is true it is not in the statutory form. The mandatory statutory form is form A (Rule 4(1) in the schedule to the Act. Under Section 4(2) of Cap 301 of the Laws of Kenya,

‘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.’ (underlining mine).

15. The Landlord’s failure to comply with the mandatory requirements of Section 4(2) and 4(4) of the Act (Cap 301) rendered the notice void. In the case of; Manaver N. Alibhai t/a Diani Boutique vs South Coast Fitness & Sports Centre Limited, Civil Appeal No. 203 of 1994, the court held 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 two 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.”

16. Consequent to the above findings, the notice of termination of tenancy dated 25.5.2023 is defective and of no effect. The same is hereby struck out with costs to the tenant.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7<sup>TH</sup> DAY OF JUNE, 2024**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Mr. Otieno holding brief for Mr. Obonyo for the Landlord and in the absence of the tenant and Counsel

