



**Khamala v Management & 2 others (Tribunal Case E168 of 2024)
[2024] KEBPRT 1127 (KLR) (2 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1127 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E168 OF 2024
M MAKORI, MEMBER
JULY 2, 2024**

BETWEEN

DOMINIC KHAMALA APPLICANT

AND

NEEBENEZER HOUSE MANAGEMENT 1ST RESPONDENT

MADAYA INVESTEMENTS 2ND RESPONDENT

MWENDA INOTI 3RD RESPONDENT

RULING

1. The present claim was filed vide a reference and an application dated 1st February 2024 supported by the supporting affidavit of Dominic Khamala.
2. In response to the reference and application the 1st and 3rd respondent filed a replying affidavit dated the 4th of March 2024 denying the claims and making claims that the tenant was given sufficient notice and that he has rent arrears to the premise.
3. From the totality of the pleadings filed by parties and submissions several issues arise for determination. In arriving on a determination on the matter it is proper to establish whether a valid notice for rent alteration or notice to vacate has been issued and whether there exists rent arrears.

i. Whether a valid notice to vacate and rent alteration was issued.

4. Section 4 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 Laws of Kenya (hereinafter referred to as the “Act”) provides that;
 4. Termination of and alteration of terms and conditions in controlled tenancy



- (1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall 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 the following provisions of this Act.
 - (2) 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.
 - (3) A tenant who wishes to obtain a reassessment of the rent of a controlled tenancy or the alteration of any term or condition in, or of any right or service enjoyed by him under, such a tenancy, shall give notice on that behalf to the landlord in the prescribed form.
 - (4) 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: Provided that—
 - i. where notice is given of the termination of a controlled tenancy, the date of termination shall not be earlier than the earliest date on which, but for the provisions of this Act, the tenancy would have, or could have been, terminated;
 - ii. where the terms and conditions of a controlled tenancy provide for a period of notice exceeding two months, that period shall be substituted 7 CAP. 301 Landlord and Tenant (Shops, Hotels and Catering Establishments) [Rev. 2022] for the said period of two months after the receipt of the tenancy notice;
 - iii. the parties to the tenancy may agree in writing to any lesser period of notice.
 - (5) A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and requires the receiving party to notify the requesting party in writing, within one month after the date of receipt of the notice, whether or not he agrees to comply with the notice.
 - (6) A tenancy notice may be given to the receiving party by delivering it to him personally, or to an adult member of his family, or to any other servant residing within or employed in the premises concerned, or to his employer, or by sending it by prepaid registered post to his last known address, and any such notice shall be deemed to have been given on the date on which it was so delivered, or on the date of the postal receipt given by a person receiving the letter from the postal authorities, as the case may be.
5. It is clear from the act and as quoted above 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.
 6. 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.”

7. Additionally, according to Section 4(2) mentioned above, the Notice of Termination of tenancy should be the prescribed form, specifically Form A, as provided for in the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966.
8. The Act further provides for the grounds on which the Landlord may seek to terminate the tenancy in Section 7 *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 Laws of Kenya the grounds stated under this provision and which are applicable herein include;
 - i. 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;
 - ii. 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; and
 - iii. 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;
9. The tenant has provided a notice to vacate in form of a letter dated the 1st of September 2023 from the management of Mount Sinai Agency. The same purports to issue a two months’ notice to the tenant to vacate before the 1st of November 2024. The issuance of the notice is not disputed by the landlord.
10. A cursory look of the rent alteration notice and the termination notice filed by the 1st and 3rd respondent clearly shows that it is not in the recommended form A as provided for in the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966 and as such it is considered as an invalid notice.

ii. Whether the landlord is entitled to the rent arrears as claimed?

11. In her replying affidavit dated the 4th March 2024 the Landlady has made claim of the tenant owing her some rental dues however the only documents attached are whatsapp correspondences which from its assessment does not clearly indicate the amount owed by the tenant if any. The landlord has not sought to attach any rent statements or receipts of payment.
12. The tenant has also not filed any corresponding documents to revert the claim and as such it is difficult for this tribunal to verily make an assessment of rent dues if any.
13. In the upshot and based on the foregoing the Tribunal finds that the reference by the Tenant is merited and makes the following orders; -
 - a. The Applicant’s reference and notice of motion Application dated 8th January 2024 is allowed.
 - b. The Respondent, his servants, agents or any other persons acting on his behalf are hereby restrained from evicting, closing or interfering with Tenant/Applicant’s quite enjoyment of



the subject property subject to the payment of agreed rent and issuance of a valid notice of rent amendment and/or eviction.

- c. Each party to bear their own costs of the application.

HON. MIKE MAKORI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON MIKE MAKORI THIS 2ND JULY, 2024 IN THE PRESENCE OF COUNSEL FOR THE RESPONDENTS AND IN THE ABSENCE OF THE APPLICANT.

HON. MIKE MAKORI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

