



**Mudoga & another v Musembi & another (Tribunal Case E811 of 2023)  
[2023] KEBPRT 1136 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1136 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E811 OF 2023  
CN MUGAMBI, CHAIR  
DECEMBER 19, 2023**

**BETWEEN**

**JACKLINE ALIVIZA MUDOGA ..... 1<sup>ST</sup> APPLICANT**

**TIMOTHY OBURU MANYANGE ..... 2<sup>ND</sup> APPLICANT**

**AND**

**EVANS MUSEMBI ..... 1<sup>ST</sup> RESPONDENT**

**DAVID MUENDO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. The tenant's application dated 18.8.2023 seeks orders of injunction restraining the Respondents from in any manner whatsoever interfering with the Applicants tenancy on shop No. B3, Ibiza Rentals, Kitengela Township and further seeks an order that the notice dated 16.8.2023 be declared illegal, null and void.

**The Tenant's depositions**

2. The 1<sup>st</sup> Applicant has deponed in his affidavit sworn on 17.8.2023 that she is a tenant of the 1<sup>st</sup> Respondent at the suit premises where she runs a barber shop, saloon and wears shop at a monthly rent of Kshs. 6,000/=.
3. The Applicant has deponed that she renovated the premises at a cost of Kshs. 170,000/= and has faithfully complied with the terms of the tenancy.
4. That sometimes in the month of February, the 1<sup>st</sup> Respondent demanded that rent deposit slips be delivered to his house and the said rent be paid before the 5<sup>th</sup> day of every month contrary to the agreement between the parties. The tenant declined to do so.



5. The tenant further depones that the 2<sup>nd</sup> Respondent on the instructions of the 1<sup>st</sup> Respondent locked the suit premises when the tenant informed the 2<sup>nd</sup> Respondent that she would pay the rent late due to unforeseen circumstances.
6. The tenant depones that the 1<sup>st</sup> Respondent issued an eviction notice to the tenant immediately after an argument arose as to the payment of a Kshs. 500/= penalty on late rent payments, the eviction notice dated 16.8.2023 gave the tenant four days to vacate the suit premises.
7. The tenant therefore depones that she has reasonable apprehension that the Respondents may actualize the process of eviction without following the due process.

#### **The 1<sup>st</sup> Respondent's depositions**

8. The 1<sup>st</sup> Respondent in his replying affidavit sworn on (undated) has admitted to serving the tenants with a notice to terminate tenancy and give vacant possession. The 1<sup>st</sup> Respondent admits that the notices issued were illegal and seeks to withdraw the same.
9. The 1<sup>st</sup> Respondent has deponed that he has issued the tenants with a valid notice to terminate tenancy dated 29.8.2023 effective 1.11.2023.
10. The 1<sup>st</sup> Respondent has also deponed that the tenants pay their rent late and that further they have not been threatened with eviction but only a notice to terminate their tenancy has been served.
11. The 1<sup>st</sup> Respondent depones further that the Tribunal ought to order that the Applicants be evicted from the suit premises.

#### **Analysis and determination**

12. The only issue that arises for determination is whether the Tenants are entitled to the prayers sought in their application.
13. None of the parties have annexed a written agreement to their affidavits and I will therefore safely conclude that the tenancy between the parties herein is a controlled tenancy as defined under Section 2 of [Cap 301](#) and therefore governed by the strict provisions of the said Act.
14. The Applicants main complaint is that the 1<sup>st</sup> Respondent served the tenants with an eviction notice dated 16.8.2023 which required the tenants to vacate the suit premises within four days.
15. I have read the said notice. It is dated 16.8.2023 and requires the tenant to vacate on or before 20.8.2023. The reasons for the eviction as given in the said notice are threats to the caretaker and misconduct.
16. The said notice is not the mandatory notice required under Section 4(2) of [Cap 301](#) and is therefore invalid. This invalidity of the notice is admitted by the 1<sup>st</sup> Respondent when he depones as follows in his replying affidavit;-
 

“That the said notices were not served as per [Cap 301](#) Laws of Kenya and this was out of my knowledge. This is after I visited Tribunal offices where I was advised the said notices were incurably defective. I apologize to the Honourable Court and to the tenants for issuing such illegal notices which I hereby withdraw...”
17. The 1<sup>st</sup> Respondent seems to hinge his response with the counter argument that he served the tenants with a proper and valid notice to terminate tenancy dated 29.8.2023 effective 1.11.2023. I have seen



the said notice and indeed it is a valid notice under the provisions of Cap 301. I do however notice that the notice was issued after these proceedings were commenced on 18.8.2023. clearly, that notice is not in issue in these proceedings and the Respondent is free to pursue the enforcement of the said notice under separate proceedings. The filing of or the issue of the notice to terminate tenancy after the tenants had already filed their complaint cannot be an answer to the complaint by the tenants and I further do not think that the Respondents can seek to enforce the notice to terminate through a replying affidavit. Proceedings under Section 6 and Section 12(4) of Cap 301 are materially distinct and cannot be mixed up for the simple reason that they give rise to different consequences.

18. Consequently, I do find merit in the tenants' application and hereby injunct the Respondents from in any manner Illegally terminating the tenancy herein and or evicting the tenants. I therefore declare the 1<sup>st</sup> Respondent's notice to terminate tenancy dated 16.8.2023 to be invalid, illegal and of no effect.
19. The complaint by the tenant dated 18.8.2023 raises the same issues raised in the tenants' application. These issues have been dealt with in the above findings and no useful purpose will be served in re-trying the issues. The complaint is therefore allowed in terms of the orders granted at paragraph 18 above. The tenants will have the costs of the application and the complaint.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF DECEMBER 2023.**

**HON. CYPRIAN N. MUGAMBI**

**CHAIRPERSON**

**19.12.2023**

In the presence of Mr. Musembi – Landlord

In the absence of the tenants

