



**Yogo & another v Obondi & another (Tribunal Case E052 of 2023)  
[2024] KEBPRT 1480 (KLR) (12 September 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1480 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E052 OF 2023  
P MAY, MEMBER  
SEPTEMBER 12, 2024**

**BETWEEN**

**LEONARD YOGO ..... 1<sup>ST</sup> TENANT**

**CHARLES AKAL ..... 2<sup>ND</sup> TENANT**

**AND**

**DAVID OBONDI ..... 1<sup>ST</sup> LANDLORD**

**LUCY OBONDI ..... 2<sup>ND</sup> LANDLORD**

**JUDGMENT**

1. The tenants commenced the present proceedings by filing the reference dated 29<sup>th</sup> August, 2023. It was the tenants' contention that they were being harassed and threatened with eviction thus forcing them to file the present proceedings. The tenants filed a notice of motion application dated 13<sup>th</sup> September, 2023 seeking for orders of temporary injunction. The landlords opposed the application through the replying affidavit sworn on 20<sup>th</sup> November, 2023 whereby among other reasons they revealed that the documents had been drawn by an unqualified person; the advocate had not taken out his practicing certificate. The application was thus expunged.
2. Subsequently, the tenants appointed a different firm to represent them. The new advocates filed an application which they later withdrew. The interlocutory applications having been dispensed with the parties proceeded with the hearing of the reference which was canvassed by way of written submissions. I will summarize each party's case hereinbelow;

**Tenants' case**

3. The tenants' stated that the landlords issued them with a notice of termination dated 6<sup>th</sup> June, 2023. It is the said notice that precipitated the filing of the present proceedings. The tenants' case is rather straightforward. They stated that the notice issued was irregular and unlawful as it was not in the



prescribed form. The tenants raised concerns over harassment too by the landlords. They urged the Tribunal to intervene in the face of the glaring illegalities committed by the landlords'

### Landlords' case

4. The landlords confirmed that the tenants were issued with the notices to terminate the tenancy as the landlords sought to carry out substantial construction. According to the landlords, the other tenants were issued with similar notices and all complied. It is only the tenants in the present proceedings who failed to vacate. The landlords also canvassed the prayers sought for grant of orders of injunction. It was the landlords' contention that the present proceedings were devoid of merit and that the same should be dismissed.

### Analysis

5. In addressing this dispute, I shall consider two aspects: the formal requirements of a notice for termination of a tenancy agreement and the Landlord's grounds for termination of the tenancy.

- a) Formal requirements of notice of termination of a tenancy.

6. Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 Laws of Kenya (hereinafter referred to as 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."

7. Additionally, Section 4(4) 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, unless the terms and conditions of the tenancy provide for a period exceeding two months or the parties to the tenancy agree in writing to a lesser period of notice.

8. 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. 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."

9. I have perused through the notice issued by the firm of Manyonge & Wanyama Advocates on behalf of the landlords. The same was in a form of a letter. While it was made pursuant to the provisions of CAP 301, it did not require the Tenant to agree or disagree with the notice in 30 days. The same was therefore defective. Life could not be breathed into the defective notice. The letter was not in the prescribed



form as provided for under the act. The provisions of the Act herein are for strict compliance and have no room for compromise. You are either on the right side of the law or wrong all together. It has no middle ground so to say.

10. Having determined that the notice was defective, I would not delve into the grounds relied on in issuing the notice.
11. The upshot of all these is that the landlords' purported notice dated 16<sup>th</sup> June, 2023 fell a shot of such a notice and no life could be breathed into it. I therefore declare the same illegal and of no legal effect nor consequence.
12. In the final analysis, I make the following orders: -
  - (i) That the notice of termination dated 16/6/2023 is declared illegal and of no legal effect nor consequence.
  - (ii) That the tenants' reference is allowed in terms that their tenancy cannot be interfered with except in strict compliance with Cap. 301.
  - (iii) Each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**HON. PATRICIA MAY**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

