



**Namutala (Suing as the Director of Classic Luxury Shuttle Ltd) & another v Omido
(Tribunal Case E028 of 2024) [2024] KEBPRT 1352 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1352 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E028 OF 2024
A MUMA, MEMBER
SEPTEMBER 18, 2024**

BETWEEN

IMMANUEL MASIBO 1ST APPLICANT

**ISAAC KWEMOI (SUIING AS THE MANAGER OF CLASSIC LUXURY
SHUTTLE LTD) 2ND APPLICANT**

AND

ALEX OKWEMBA OMIDO RESPONDENT

RULING

A. Parties and their Representatives

1. The Applicant, Classic Luxury Shuttle Limited, occupies the business premises in stall No. 4P9M +59B at Chavakali Market (the “Tenant”).
2. The firm of Ben Aduol Nyanga & Co Advocates represents the Tenant in this matter.
3. The Respondent, Alex Okwemba Omido, is the proprietor of the business premises in stall No. 4P9M +59B at Chavakali Market (the “Landlord”).
4. The firm of D.C Chitwah & Co Advocates represents the Landlord in this matter.

B. Dispute Background

5. The Tenant moved this Honorable Tribunal vide a Reference and Application evenly dated 5th February 2024. The Tenant sought, inter alia, the following Orders from this Honorable Tribunal:
 - i. An Order of interim injunction restraining the Respondent or any other person assigned or with their authority from threatening the Tenant’s workers, barring workers from performing their duties in the designated stall space, destroying stationeries and parcels receipt books,



chasing employees/ drivers with their vehicle from Chavakali Municipal parking yard for Classic Luxury Shuttle Ltd.

- ii. An Order of interim injunction restraining the Respondent or any other person assigned or with their authority from subletting the said stall space to a third party, or erecting temporary and or permanent structure on Stall No. 4P9M+59B at Chavakali Market, barring employees from performing their duties in the designated stall space and or chasing employees/drivers with their vehicles from Chavakali Municipal parking yard for Classic Luxury Shuttle Ltd.
 - iii. Status Quo be maintained until the Application is heard and determined.
 - iv. Compensatory damages, special damages and costs of the Application.
6. Having considered the Tenant's Application, the Tribunal vide an Order dated 8th February 2024 allowed Prayers 1,2 and 3 as per the Tenant's Application dated 5th February 2024 in the interim.
 7. Subsequently, the Landlord filed a Replying Affidavit dated 19th March 2024 in response to the Tenant's Application and Reference dated 5th February 2024.
 8. Consequently, the Tenant filed their written submissions dated 5th April 2024.

C. Tenant's Claim

9. The 1st Applicant entered into a Tenancy Agreement on behalf of the company with the Landlord on 7th December 2023.
10. The Landlord agreed to sublet and the 1st Applicant being the Tenant on behalf of Classic Luxury Shuttle Ltd agreed to be sublet a space in the business premises.
11. He avers that the Tenant has complied with laws that govern the single business operation in the County Government of Vihiga.
12. He further avers that despite the defendant not being the owner of the business premises, the Tenant has paid rent for the premises for the months of December 2023, January 2024 and February 2024, directly to the Landlord vide M-pesa.
13. The Applicant further contends that the Tenant assigned the Landlord the duty of managerial post as well as caretaker as stipulated in the Tenancy Agreement. As such the Landlord was issued with a copy of the employee code of conduct for Classic Luxury Shuttle Limited.
14. He also avers that instead of the Landlord performing his duty as manager, he has decided to destroy the Tenant's stationeries, receipt books, parcels receipt and has barred the Tenant's employees from utilising the business premises disrupting the smooth running of the business hence incurring losses.

D. Landlord's Defence

15. The Landlord avers that he entered into a tenancy agreement with the Tenant on 7th December 2023. The Tenant has been on the premises under a sublease, which premises have been leased to him by the County Government of Vihiga.
16. He further avers that his lease with the County Government of Vihiga is subject to the control of Vihiga County Government. Furthermore, he avers that his Lease with Vihiga County Government is a space lease and not a stall as indicated in the Tenant's Papers and is subject to the directives of the County Government on what structure ought to be constructed in the leased space.



17. He further avers that the County Government of Vihiga held a meeting through the market committee of Chavakali on 10th February, 2024 where it was resolved that the all temporary structures would be removed so as to allow planning for construction of permanent stalls.
18. He further avers that all along he has been paying rates, ground rent and single permits for the business premises from 2016 to date only to be surprised that the applicant usurped this role just before the commencement of this suit.
19. He further avers that the County Government issued notice through the market committee for the demolition of all temporary structures at Chavakali anytime now.
20. As a result of the demolitions, he avers that the sublease will automatically be affected due to the ensuing circumstances.
21. He further avers that he has never involved the OCS Chavakali into harassing the Tenant since the OCS Chavakali sits on the market committee as a member for security reasons.
22. He further avers that from the agreement of lease at Clause No.4, it was agreed that he would be paid KShs.15,000 as salary/responsibility allowance by the Applicant for which he has failed from the execution of the agreement but has craftly presented a scenario through M-Pesa statement where he alleges to have paid rent. As such he seeks clarity on whether the Kshs.15,000 M-pesa statement amounts to rent or his monthly stipend.

E. Issues for Determination

23. Having carefully perused all the pleadings and evidence presented before this Honourable Tribunal by the parties, it is my respectful finding that the sole issue for determination is:

Whether the Tenant's application dated 5th February 2024 is merited?

F. Analysis and Findings

Whether the Tenant's Application dated 5th February 2024 is merited?

24. The Landlord and Tenant (Shops, Hotels and Catering Establishments) Cap 301, Laws of Kenya (hereinafter the "Act") is the governing legislation that provides protection to tenants of certain premises from eviction or exploitation, and addresses matters connected therewith and incidental thereto.
25. Section 2(1) of the Act defines a controlled tenancy as:

“tenancy of a shop, hotel or catering establishment—

(b) which has been reduced into writing and which—

(i) is for a period not exceeding five years; or

(ii) contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof”
26. In the instant case, it is undisputed that the relationship between the Landlord and Tenant herein is governed by the Tenancy Agreement dated 7th December 2024.



27. The Tenancy Agreement contains a termination provision in Clause (d) which states that:
- “The tenancy may be terminated by either party giving to the other six (6) months notice.”
28. Therefore, the matter herein falls within the purview of this Honourable Tribunal and as such has the jurisdiction to determine the matter.
29. Subsequently, Section 4 of the Act provides for the termination of a controlled tenancy. It provides that:
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. ...
 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—
 - (ii) where the terms and conditions of a controlled tenancy provide for a period of notice exceeding two months, that period shall be substituted for the said period of two months after the receipt of the tenancy notice;”
30. Moreover, Section 7 of the Act outlines the grounds under which a landlord may seek to terminate a tenancy upon service of a valid notice of termination. Section 7(f) provides that:
- “(1) Where under section 4 of this Act served a notice of termination of a controlled tenancy on the tenant, the grounds on which the landlord seeks to terminate such tenancy may be such of the following grounds as are stated in the aforesaid notice—
 - (f) 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;”
31. As established above, the tenancy in question is a controlled tenancy, and therefore it can only be terminated in accordance with the Act.
32. In the present case, the Landlord claims that the County Government of Vihiga issued a notice vide the market committee for the demolition of all temporary structures at Chavakali. However, the Landlord has not presented this notice to this Honourable Tribunal.
33. Additionally, considering the imminent demolition and evacuation of the premises, the Landlord is required to issue the Tenant herein with the requisite 6 month notice as provided in the Tenancy Agreement in Clause (d) which states that:
- “the tenancy may be terminated by either party giving to the other six (6) months notice.”



34. The Landlord is obligated to provide notice in the designated Form A, as specified in Rule 4(1) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations.
35. Moreover, the notice period shall only take effect upon the lapse of six (6) months after the Tenant has received the notice.
36. Furthermore, the notice must clearly state the grounds for termination, which in this instance are outlined in Section 7(f) of the Act, relating to demolition, reconstruction, or significant work on the premises.

G. Orders

37. The Tenant's Reference and Application dated February 5, 2024 is allowed in terms of Prayer 2 and the OCS Kilingili Police Station to assist in compliance.
38. Tenant shall have costs assessed at KShs. 10,000 to be offset from the rent.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, delivered and signed at Nairobi on this 18th day of September 2024 in the presence of Immanuel Namutala for the Tenant/Applicant and in the absence of the Respondent/Landlord.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

