



**Muchiri v Wangoi (Tribunal Case E089 of 2024)
[2024] KEBPRT 1416 (KLR) (16 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1416 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E089 OF 2024
CN MUGAMBI, CHAIR
AUGUST 16, 2024**

BETWEEN

JOHN MUCHIRI LANDLORD

AND

MARTHA WANGOI TENANT

RULING

1. The Tenant's Application dated 8.5.2024 seeks an order that the Tenant be evicted from the suit premises, House No. 23, on Busia Municipality Plot NO. 298. The Landlord has also sought the assistance of the OCS Busia police station in ensuring the orders are complied with. The Application also has the usual prayer for costs.
2. The thrust of the Landlord's affidavit in support of his Application is that he served upon the Tenant a notice to terminate tenancy and the Tenant has not opposed the same by filing a Reference to the Tribunal.
3. The Landlord has deponed in his said affidavit that even though the Tenant all along knew that the Landlord needed to use the premises by 1.5.2024, the Tenant still refused to vacate the premises.
4. The Tenant has deponed in her replying affidavit that she has paid rent and is still willing to pay the rent for May, June and July once she is provided with the details of where the rent is to be paid.
5. It is also deponed by the Tenant that on 29.12.2024, she was served with a notice to terminate the tenancy with effect from 29.2.2024 and against which she filed a Reference in Tribunal Case No. E031 of 2024, a copy of the Reference filed has been annexed.
6. The Landlord in his further affidavit has deponed that on 20.2.2024 he personally served the Tenant with a copy of the termination notice.



7. The Landlord has further deponed that the Tenant having read and refused to sign the notice to terminate tenancy served upon her, he further served her via whatsapp using the Tenant's cell phone No. 0724986888 on 1.3.2024.

Analysis and determination

8. The only issue that arises for determination is whether the Landlord is entitled to the orders sought in his Application.
9. The determination of the Application revolves around the validity of the Landlord's notice to terminate tenancy dated 24.2.2024 and whether or not the same was served upon the Tenant.
10. The Landlord's further affidavit sworn on 25.2.2024 at paragraph 4 states as follows:-

“That on the 20th day of February 2024, I personally served the Tenant/Respondent herein with a copy of a notice of termination of tenancy (FORM A) of the Act. Having read the notice and refused to sign on our return copy in acknowledgement thereof, I further sent a copy via her whatsapp No. 0724986888 on March 1st 2024.”

11. The Tenant did not file any further affidavit to controvert this issue of service by the Landlord of the notice to terminate her tenancy.

Although the Tenant has in her submissions denied that she was served with any other notice apart from the one dated 29.12.2023, it is settled law that submissions do not form part of the evidence. In this case, in the absence of any affidavit evidence denying that the Tenant was served with the notice to terminate tenancy dated 20.2.2024, I do find on a balance of probabilities that indeed the Tenant was served with the statutory notice to terminate her tenancy.

12. The Tenant's response that she has filed a Reference in BPRT Case No. E031 of 2024 cannot amount to the Reference contemplated under Section 6(1) of Cap 301 and cannot therefore be a response/objection to the Landlord's notice to terminate tenancy. The Tenant has filed the Reference in Case No. E031 of 2024 (Kakamega) complaining about the alleged illegal notice by the Landlord. The Complaint is dated 13.2.2024 well before the notice to terminate tenancy dated 20.2.2024 came into existence.

That Complaint in case No. E031 of 2024 therefore has no relevance to the instant dispute between the parties.

13. Having already found that the Tenant was served with the notice dated 20.2.2024, the Tenant was required under the provisions of Section 6(1) of Cap 301 to file her Reference to the Tribunal in opposing the notice to terminate her tenancy. The Tenant failed to do so as a consequence of which the notice to terminate her tenancy became effective under the provisions of Section 10 of Cap 301 which provides as follows:-

“Where a landlord has served a notice in accordance with the requirements of Section 4 of this Act on a Tenant and the Tenant fails within the appropriate time to notify the Landlord of his unwillingness to comply with such notice or to refer the matter to a Tribunal then subject to Section 6 of this Act, such notice shall have effect from the date therein specified to terminate the tenancy or terminate or alter the terms and conditions thereof or the rights or services enjoyed thereunder.”



14. In view of the above findings, I do find merits in the Landlord's Application dated 8.5.2024 and allow it on the following terms:-
- a. That the notice to terminate tenancy dated 20.2.2024 is approved with the alteration that the effective date will be sixty (60) days after the date of this Ruling.
 - b. That consequently, the Tenant will render vacant possession of the suit premises within sixty (60) days being enough time for the Tenant to relocate her business.
 - c. That the Tenant failing to vacate the suit premises within the sixty (60) days aforesaid, the Landlord will be at liberty to evict the Tenant using the services of a licensed auctioneer.
 - d. That the Landlord will have the costs of the Application.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF AUGUST, 2024

HON. CYPRIAN MUGAMBI - CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. John Muchiri- Landlord and Ms. Martha Wangui – Tenant and in the absence of Counsels for both parties

