



**Mwaro v Gongolo (Tribunal Case E106 of 2023)
[2024] KEBPRT 1337 (KLR) (14 March 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1337 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E106 OF 2023
N WAHOME, MEMBER
MARCH 14, 2024**

BETWEEN

KEA HAMISI MWARO LANDLORD

AND

JAHIL GONGOLO TENANT

JUDGMENT

1. This judgement is on the Landlord's reference dated 4th May 2023. The same raised the following grievances against the Tenant:-

"He has refused to pay rent amounting to Kshs.240,000/-. I pray this Tribunal to compel him to pay the arrears and leave the premises in vacant possession and OCS Kiambeni Police Station to assist".
2. The Tenant never filed any responses to the reference and on confirming proper service on him, this court allowed the landlord to proceed with his case on the 22nd February 2024. The landlord testified and closed his case. His evidence was to the effect that;
 - i. The tenant had refused to pay rent at Kshs.6,000/- per month since January, 2019 all totaling to Kshs.300,000/- at the time of his evidence on the 22nd February 2024.
 - ii. He had made demands for payment of the rent to the Tenant as per the letter dated 8th March 2022 but he had failed to comply.
 - iii. He had also issued the Tenant with a termination notice dated 8th March 2022 and 21st April 2023 but that the Tenant had remained put in the premises.



3. He therefore sought for the intervention of this court to have the Tenant compelled to pay all the rents in arrears and vacate the demised premises or be evicted with the assistance of the OCS Kiembeni Police Station.
4. In view of the above, it is in my considered opinion that the issues for determination in this matter are the following:-
 - A. Whether the Tenant owes the Landlord Kshs.300,000/- in rent arrears.
 - B. Whether the Landlord's notices of termination dated 8th March 2022 and 21st April 2023 are lawful.
 - C. Who should bear the costs of this suit.

Issued No. A on whether the landlord has established his claim for payment of Kshs.300,000/- owed to him in rent arrears by the Tenant, I appreciate that though served with the court processes and having been duly notified of these proceedings, the Tenant did not file any rebuttals nor appear in court.

5. The landlord on his part testified that the respondent was his Tenant and that he had abdicated his duty to pay rent since January 2019. He presented demand letters to the court to the same effect. I have no reason whatsoever to doubt the evidence of the landlord. He however claimed Kshs.300,000/- for the months between January, 2019 and February, 2024. The reality is actually that the Tenant is in rent arrears of Kshs.378,000/-. I will however award Kshs.300,000/- as claimed with a further Kshs.6,000/- being the rent for March 2024 to make the total of Kshs.306,000/-.

ISSUE NO. B. Whether the landlords termination notice dated 8th March 2022 and 21st April 2024 are lawful.

6. At the very first instance, it is my view that the law does not anticipate that landlords would engineer notices of termination at will and without limitation. Once a notice is issued, the same must be addressed to its conclusion. In the wisdom of Section 4(2) of the Landlord and Tenant (Shops, Hotels and Catering Establishments Act Cap. 301, hereinafter "the Act" it 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 of any right or service enjoyed by him under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form".

7. The letters dated 8th March 2022 and 21st April 2023 by the landlord's advocates are not in the prescribed form as known to the law and were therefore not notices capable of having any effect in law".

8. Regulation 4(1) of the Regulations to the Act further provide that:-

"A notice under section 4(2) of the Act by a tenant shall be in form A in the schedule to these Regulations". Indeed the letters which purported to give notice of the termination of the tenancy also did not require the Tenant to agree or object to the notice in 30days and the notice given did not indicate when the same would take effect.

9. I therefore determine that the purported notice's of termination were without the backing of the law. The courts are settled on this issue and I seek reference to the case of:- Narshidas & Co. Ltd – Vs- Nyali



Air Conditioning And Refrigeration Services Ltd Civil Appeal No. 205 Of 1993 where the court held that:-

“The landlord and Tenant (Shops, Hotels and Catering Establishments Act) Cap. 301 Laws of Kenya 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 that 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 two (2) months from the date of receipt thereof by the Tenant and the notice must also specify the grounds upon 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. The notice to quit purportedly relied on by the defendant in this Appeal is by no means a notice which in anyway complies with form A as prescribed in the Act. The notice to quit given or issued by the defendant was clearly void and had no effect in law on the plaintiff's tenancy and the plaintiff was under no duty, legal or otherwise to react to it”.

Issue No. C – Who should bear the costs of this suit.

10. Though the costs follow the event which is normally the success of either party. I find that the landlord has consumed large judicial time by failing to with expediency prosecuting this case. His absentism from these proceedings have also led to unnecessary dismissals and later reinstatements of the suit. I therefore order that each party bear own costs.
11. In the final analysis, I make the following orders:-
 - i. That the landlord claim for rent arrears is allowed at the sum of Kshs.306,000/- and may execute distress in recovery of the same.
 - ii. That the landlord's purported notices of termination of tenancy dated 8th March 2022 and 21st April 2023 are declared unlawful and of no effect in law.
 - iii. That the Application of section 9(3) of the Act is dispensed with and the landlord is allowed to issue a termination notice in compliance with the Law at his convenience.
 - iv. That each party shall bear own costs of this suit.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF MARCH 2024.

HON. NDEGWA WAHOME, MBS

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Judgement delivered in the presence of Mr. Mutisya for the Landlord and in the absence of the Tenant.

HON. NDEGWA WAHOME, MBS

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

