



**Mbiti v Manoti (Tribunal Case E058 of 2022)
[2024] KEBPRT 585 (KLR) (Civ) (9 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 585 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL**

TRIBUNAL CASE E058 OF 2022

P MAY, MEMBER

APRIL 9, 2024

BETWEEN

TIMOTHY MAUNDA MBITI TENANT

AND

ANDREW MOKAYA MANOTI RESPONDENT

RULING

1. The Landlord issued a notice to terminate tenancy dated 6th October, 2022 pursuant to section 4(2) of [Cap 301](#). The notice was to take effect from the 10th December 2022. The tenant was aggrieved by the said notice and approached the Tribunal vide the notice of motion dated 3/12/ 2022.
2. The application is premised on the grounds that were set out in the tenant's supporting affidavit. The tenant accused the landlord of acting in bad faith and maintained that they were not in any rent arrears. He stated further that the business was his sole source of livelihood and that if the orders to evict him were allowed to subsist, he stood to suffer irreparable harm.
3. The application was placed before the Tribunal on 6th December, 2022 whereby the Tribunal issued interim orders in favour of the tenant pending the inter- partes hearing. The landlord opposed the application stating that the tenant was in rent arrears and that he wished to proceed with the eviction. The landlord also filed an application under certificate dated 17th January, 2023 seeking orders of eviction against the tenant.
4. The parties elected to canvass the applications by way of written submissions. I have considered the submissions on record and wish to proceed as follows:
5. I will therefore proceed to determine the following issues as framed by the parties in their submissions
 - a. Whether the tenant has established sufficient grounds for the grant of orders sought.



- b. Whether the notice issued was proper and lawful.
6. In determining the above issues, it is imperative to note that they are intertwined. We cannot deal with them in isolation. I will therefore address the merits of both jointly.
7. I have well established that there existed a controlled tenancy between the landlord and the tenant. Termination of the said tenancy requires issuance of a termination notice in prescribed form. It is incumbent upon this tribunal to assess that the notice issued to the tenant by the landlord is properly as prescribed in law by Cap 301.
8. Section 4 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) states:
 4. Termination of, and alteration of terms and conditions in, controlled tenancy

(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.(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—(i)where notice is given of the termination of a controlled tenancy, the date of termination shall not be earlier than the earliest date on which, but for the provisions of this Act, the tenancy would have, or could have been, terminated;(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;(iii)the parties to the tenancy may agree in writing to any lesser period of notice."
9. The above position of the law on the issue of a termination notice is now settled. The court in [Manaver N Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited](#), Civil Appeal No 203 of 1994, stated that: -"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 ground 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."
10. It is evident that the notice of termination of the tenancy herein was in Form A as prescribed by the Act. Further, the notice of termination of the tenancy was to take effect on 6th December, 2022, being a period exceeding two months as required by the Act.
11. Having established that the notice of termination of the tenancy was in the prescribed form, I shall proceed to analyze the substance of the notice with regard to the grounds of termination of the tenancy as follows:

Whether the landlord has met the requirements of section 7 (1) (f) of the Act?

12. Article 40 of the [Constitution](#) of Kenya 2010 guarantees the right of every person either individually or in association with others, to acquire and own property. This includes the right of a proprietor of



land to enjoy and benefit from the use of such property and to deal with the property as they please within the confines of the law.

13. Accordingly, section 7 of the Act clearly stipulates the grounds upon which a landlord may seek to terminate tenancy. One of the grounds as enshrined in section 7 (f) of the Act is: -7(f) that 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.
14. The above provision affirms the right of the landlord to undertake renovations and/or repairs to their property. According to the termination notice served upon the tenant, the landlord sought to terminate the tenancy on the ground “the landlord intends to renovate the business premises whereby your availability will not make it possible”
15. It is trite law that he who alleges must prove. The landlord has not tendered any evidence to convince the tribunal that the renovations to be undertaken are major. There is no documentation from the relevant agencies giving clearance for the intended construction works. On this basis therefore, I find that the landlord has not convinced this Honourable Tribunal that the renovations to be conducted in the suit premises are substantial or extensive in nature to warrant vacant possession of the suit premises. The landlord has therefore failed to meet the threshold of terminating a tenancy in accordance with Section 7 (1)(f) of the Act.
16. I will now turn to the question of default in rent payment. Section 7(1) (b) of the said Act provides one of the grounds for seeking to terminate tenancy by a landlord to be a tenant’s default in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable. This is one of the grounds cited by the landlord but which has unfortunately not been sufficiently proven. The landlord has a duty to maintain a rent book but has not adduced the same.
17. The landlord’s notice having been invalidated as explained above, it will be a mere academic exercise to interrogate the merits of the application for injunction.
18. In the end, the following orders commend itself:
 - a. The landlord’s notice of terminate tenancy dated 6th October, 2022 is quashed as it is irregular and unlawful.
 - b. The landlord to file an updated statement of accounts within 14 days. The tenant to clear any outstanding rent arrears within 21 days upon receipt of the statement.
 - c. Each party shall bear their own costs.
 - d. The Reference is settled in those terms.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9TH DAY OF APRIL, 2024.

HON. PATRICIA MAY - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Karanja for the Tenant/Applicant

No appearance for the Landlord

