



**BSH Cargo Limited v A O Basid Limited (Tribunal Case  
E1211 of 2023) [2024] KEBPRT 403 (KLR) (19 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 403 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E1211 OF 2023  
P KITUR, MEMBER  
APRIL 19, 2024**

**BETWEEN**

**BSH CARGO LIMITED ..... TENANT**

**AND**

**A O BASID LIMITED ..... LANDLORD**

**RULING**

**A. Parties and Representatives**

1. The Applicant A. O Basid Limited is the Tenant having rented out premises from the Landlord herein (hereinafter known as the ‘Tenant’)
2. The Firm of Kiptinness & Odhiambo Advocates LLP represents the Tenant.
3. The Respondent A. O Basid Limited has leased out warehouse/ storage space on Plot 38 along Likoni Road within Nairobi County to the Tenant. (hereinafter known as the ‘Landlord’)
4. The firm of CSA Advocates LLP represents the Landlord.

**B. The Dispute Background**

5. The Tenant avers that it entered into a Warehouse Agreement with the Landlord on 1<sup>st</sup> September 2020 for warehouse/ storage space on Plot 38 along Likoni Road within Nairobi County for a term of five years commencing on 1<sup>st</sup> September 2020.
6. The Tenant further states that the Tenancy continued uninterrupted until when without justification, the Landlord unilaterally locked up the warehouse and had locks to the premises changed and further that the Landlord’s action was tantamount to an unlawful termination of the Tenancy which failed to and/or neglected to comply with the provisions of the Landlords and Tenant (Shops, Hotels, Catering Establishments) Act, Cap 301.



7. As a result of the above, the Tenant filed a Complaint and a Notice of Motion Application both dated 1<sup>st</sup> December 2023.
8. The Tenant was seeking the for orders Inter alia;
  - i. This Application be Certified as extremely urgent, service thereof be dispensed with in the first instance;
  - ii. In the first instance, the Respondent do forthwith, unlock and grant unconditional entry and access to the Warehouse/ Godown located in Plot No. 38 near House of Manji at Likoni Road in Nairobi City County's Industrial Area (the Business Premises) pending the hearing and determination of this Application.
  - iii. In the first instance, and thereafter pending the hearing and determination of the Application, a temporary order of injunction do issue restraining the Respondent whether by itself, its employees, servants or agents and/or otherwise from invading entering into, further locking up, barassing, intimidating, or in any manner whatsoever interfering with the Tenant/ Applicant's quiet occupation and use of Plot No. 38 near House of Manji at Likoni Road in Nairobi City County's Industrial Area.
  - iv. Pending the hearing and determination of the Application and of the Reference inter partes, a temporary order of injunction do issue restraining the Respondent whether by itself, its employees, servants or agents and/or otherwise from unlawfully terminating the tenancy and/ or evicting the Tenant/ Applicant from Plot No. 38 near House of Manji at Likoni Road in Nairobi City County's Industrial Area;
  - v. The Officer Commanding Industrial Area Police Station or any officers seconded by the Division to ensure peace and compliance of the Orders of this Honourable Tribunal.
  - vi. The costs of this application be provided for.
9. The Landlord in response to the Tenant's Reference and Application filed a Replying Affidavit dated 22<sup>nd</sup> January 2024 in which it averred that the Tenant had failed and or neglected to pay the agreed monthly storage fee necessitating the Landlord to demand the unpaid fees and further issuing the Tenant with a Termination Notice in accordance with the terms of the Agreement.

### **C. List of Issues for Determination**

10. The issues raised for determination are as follows;
  - a. Whether the Tenant is entitled to the reliefs sought.

### **D. Analysis and Findings**

#### **Whether the Tenant is entitled to the reliefs sought.**

11. From the evidence by the parties, it is clear that the present relationship as between them falls within the definition of a controlled tenancy under Section 2 of the Landlord and Tenants (Hotels, Shops and Catering Establishments) Act Cap 301 ("the Act") which provides:

“controlled tenancy” means a tenancy of a shop, hotel or catering establishment—

- a. which has not been reduced into writing; or



- (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; or
  - (iii) relates to premises of a class specified under subsection (2) of this section:

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;

12. The Act requires a Landlord who wishes to terminate or alter the terms of a controlled tenancy to issue a notice in the prescribed form. Section 4 of the Act provides as follows;

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.

13. In *Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited*, Civil Appeal No. 203 of 1994 the Court of Appeal held 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.

14. Additionally, in *Nandlal Jivraj Shah & 2 others (all trading as Jivaco Agencies v Kingfisher Properties Limited* [2015] eKLR the Court of Appeal pronounced itself as follows;

“The procedure of terminating a controlled tenancy is contained in the Act. Under Section 4(1) thereof, termination of controlled tenancies can only be undertaken under the purview of the Act as follows: -

- 4(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall 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 the following provisions of this Act.
- (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....” (Emphasis added)

15. In the present matter before this Honourable Tribunal, it is clear that the Landlord issued a termination notice dated 15<sup>th</sup> October 2023, which notice did not comply with the provisions of cap 301, nor was it in the format of a Notice to Terminate Tenancy as provided under the schedule to the Landlord and



Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966.

16. The provisions of the Act with respect to issuing a notice are couched in mandatory terms. Without the said Notice to Terminate no eviction or alteration can occur.
17. In light of the foregoing, I therefore proceed to order as follows;

#### **E. Orders**

18.
  - a. The upshot is that the Tenant's Application dated 1<sup>st</sup> December 2023 hereby succeeds in the following terms;
  - b. The Landlord is restrained, whether by itself, its employees, servants or agents and/or otherwise from unlawfully terminating the tenancy and/ or evicting the Tenant/ Applicant from Plot No. 38 near House of Manji at Likoni Road in Nairobi City County's Industrial Area.
  - c. The Tenant shall continue paying rent as and when it falls due failing which the Landlord shall be at liberty to distress without any further reference to the Tribunal.
  - d. The Landlord shall be at liberty to issue a Notice to Terminate or Alter terms of the Tenancy no earlier than 30<sup>th</sup> June 2024.
  - e. This Ruling settles the Complaint dated 1<sup>st</sup> December 2023.
  - f. Each party shall bear their own costs.

**HON P. KITUR - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR THIS 19<sup>TH</sup> DAY OF APRIL 2024 IN THE PRESENCE OF ONYANGO FOR THE TENANT AND LUTUKAI FOR THE LANDLORD.**

**HON P. KITUR - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

