



**Chuchu v Muthoni (Tribunal Case E750 of 2023)
[2023] KEBPRT 1173 (KLR) (Civ) (18 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1173 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E750 OF 2023
N WAHOME, MEMBER
DECEMBER 18, 2023**

BETWEEN

STEPHEN KIMANI CHUCHU TENANT

AND

ESTHER MUTHONI LANDLADY

RULING

1. This reference and the application thereof both dated 08.08.2023 were triggered by the alleged notice to terminate tenancy dated the 03.08.2023 which was to take effect on the 18.08.2023. The Tenant in the premises challenged the legality of the termination notice and further sought for orders to restrain the landlord from interfering with his occupancy of the demised premises.
2. On her part and in a replying affidavit sworn on the 8.11.2023, the landlady claimed that her termination notice was lawful, the Tenant was in rent arrears for at least 2 ½ years, she had reported the tenant to the police for being a nuisance and that the Tenant had generally misled this Tribunal in his reference and application thereof.
3. It is my consideration that from the evidence on record, judicial precedents and the law, this court is able at this instance to determine both the application and the reference together.
4. The issues that arise from the materials placed before me in my considered opinion are the following:-
A: Whether the Landlord's termination notice dated 3.8.2023 is lawful.
B: Whether the Tenant is in any rent arrears
C: Who should bear the costs of the Reference and Application.
5. I will proceed to lay determination on the issues as listed.



A: Whether the Landlord's Termination notice dated 3.8.2023 is Lawful

6. That I have seen the letter dated 3.8.2023 by the landlord purporting to terminate the tenancy herein. The letter cannot, however remotely be associated with the prescription offered by the Act and the regulations thereof and in particular Section 4(2) of [Cap 301](#) and Regulation 4(1) of the [Regulations](#) to the Act.
7. Section 4(2) 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 right or services enjoyed by the tenant under such tenancy, shall give notice in that behalf in the prescribed form.”
8. Section 4(4) of the [Act](#) provides that:-

“No tenancy notice shall take effect until such date, not being less two months after the receipt thereof of by the receiving party as shall be specified therein.”
9. Regulations 4(1) of the [Regulations](#) to the Act provide that:-

“A notice under Section 4(2) of the Act by a landlord shall be in form A in the schedule to these regulations.”
10. In the case of; [Fredrick Mutua Mulinge t/a Kitui Uniform v Kitui v Kitui Teachers Housing Sacco Society Ltd](#) [2017] eKLR, while quoting with approval the case of [Manver N. Alibhai t/a Dami Boutique v South East Fitness & Sports Centre Limited](#) Civil Appeal No. 203 of 1994 the court had this to say;-

“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 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.”
11. From the foregoing, it is clear that the purported termination notice dated 3.8.2023 was unlawful, null and void ab initio and of no effect nor consequence. It never attempted to meet the threshold or hallmarks recognized by the eyes of the law.

B: Whether the Tenant is in any Rent Arrears

12. The tenant in his reference and also in the application vowed that he did not owe the landlord any rent in arrears. In the landlord's notice dated 3.8.2023, she had not indicated that the Tenant was in any rent arrears. If there was any such rent in arrears, it would have obviously formed a ground of termination of the tenancy.



13. Section 7(1)(b) of the [Act](#) provides one such ground as;-

“That the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or was persistently delayed in paying rent which has become due or payable.”

14. That the landlord only brought up the issue of rent arrears in the replying affidavit sworn on the 8.11.2023 is very suspicious. I would therefore be reluctant to determine that there is such rent arrears but will allow the parties to reconcile their respective rental accounts and the Tenant to pay whatever is found to be in arrears within thirty (30) days of this Ruling.

C: Who should bear the costs of this application and costs

15. While appreciating the provisions of Section 27 of the [Civil Procedure Act](#), in looking at this matter in totality, I do not see any reason as to why I should interfere with the conventional wisdom of this Section. I will therefore award the costs thereof to the Tenant.

16. In the final disposition, I make the following orders;-

- a. That the termination notice dated 3.8.2023 is declared unlawful, null and void ab initio and of no consequence.
- b. That both parties shall reconcile their respective rental accounts and the Tenant shall pay any rent in arrears if full within thirty (30) days.
- c. The Tenant is awarded costs of Kshs. 10,000/= to be offset from rent payable to the landlord.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF DECEMBER 2023.

HON. NDEGWA WAHOME, MBS - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of the tenant and in the absence of the landlord.

