



**Joto & another v Oteko (Tribunal Case E112 of 2024)  
[2024] KEBPRT 1730 (KLR) (25 November 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1730 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E112 OF 2024  
P MAY, MEMBER  
NOVEMBER 25, 2024**

**BETWEEN**

**RASHID CHITSAMA JOTO ..... 1<sup>ST</sup> TENANT**

**PETER NYAKAKO OGUNGA ..... 2<sup>ND</sup> TENANT**

**AND**

**JAMES OTEKO ..... LANDLORD**

**JUDGMENT**

1. The present proceedings were commenced by the tenants by way of a reference dated 16<sup>th</sup> April, 2024. The tenants complained against the landlord's actions which allegedly frustrated their occupation of the demised premises and were contrary to the terms of the tenancy. The tenants had filed interlocutory applications but the same were dispensed with on 8/5/2024 paving the way for the hearing of the reference. The hearing proceeded on 14/8/2024 and 2/10/2024 where both parties called witnesses who testified in support of their respective positions. At the close of the hearing, each party filed submissions. I have considered the submissions on record and would proceed as follows:

**Summary of the Tenants' case**

2. The tenant in their testimony stated that they entered into a lease agreement with the landlord sometimes on 18<sup>th</sup> November, 2023 where they operate a pharmacy on the demised premises. They stated that they paid the landlord upfront rent for 20 months. The landlord however kept making demands for rent and sometimes in February 2024 he sent a truckload of sand and pebbles and deposited it at the demised premises with a view of blocking their entrance. This made it impossible for their clients to access the premises.
3. The tenants' claimed further that the landlord sometimes in April, 2024 removed the roofing sheets from the premises thus exposing their tools of trade including computers and medical supplies. It was the tenants' position that the actions were reported to the police but no action was taken and their



attempts to have the matter resolved amicably did not bear fruit. The tenants stated that the means used by the landlord to terminate tenancy reek of impunity, malice and are outrightly illegal.

4. The tenants filed a valuation report of the losses and damages caused by the landlord's actions. The valuer was called to testify in support of the tenants' case where he reiterated the contents of his valuation report. The tenants' case was that the actions of frustrating their tenancy adversely affected their business.

### **Summary of the landlord's case**

5. The landlord stated that they received a notice to demolish from the county government since the premises had encroached into a road reserve. He refuted claims that he removed the roof of the premises. He denied knowledge of the goods mentioned and that business was running as usual. He stated that rent was Kshs. 50,000/- and that he had allowed the tenants to enjoy peaceful occupation.
6. In cross examination, he stated that he wished to renovate the demised premises. He maintained that the rent was Kshs. 50,000 even though he did not adduce any evidence. He denied that the building materials did not belong to him. He claimed that rent was owing but did not provide a statement of account.

### **Analysis**

7. The crux of the present dispute revolves around the alleged frustration of the tenants by the landlord. The protagonists took diametrically divergent paths on majority of the issues that gave rise to the dispute but only agreed on the existence of the tenancy. The rent payable is disputed.
8. It is clear from the evidence tendered that the landlord sought to terminate the tenancy as revealed in his evidence in chief and cross examination. The position of the law on the issue of a termination notice is now settled. The Court in *Manaver N. Alibhai T/A Diani Boutique vs. 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.”

9. There is no evidence that the landlord adhered to the above set out process. He has tried to hide behind the notice issued by the county government but the said notice was never brought to the attention of the tenants until the hearing of the reference. The existence of the said notice did not waive the requirements of the Act.
10. The rent payable is disputed. The parties did not do any justice in trying to adduce evidence of the rent payable in the form of receipts and invoices or rent statements to enable the Tribunal to verify the rent payable. Section 3 of Cap 301 of the Laws of Kenya requires the landlord to keep a rent book for this very purpose. The landlord has not produced any rent records or the rent book as required by the Law. Section 3...of Cap 301 in this regard provides as follows;-“The landlord of a controlled tenancy shall keep a rent book in the prescribed form of which he shall provide a copy for the tenant and in which



- shall be maintained a record authenticated in the prescribed manner of the particulars of the parties to the tenancy and the premises comprised therein and the details of all payments of rent and of all repairs carried out to the premises.”
11. The landlord having failed to discharge his duty, the tribunal will uphold the position advanced by the tenant that the rent payable was Kshs. 20,000/-. The tenant has been consistent in their testimony from the point they filed their reference.
  12. I will now turn to the reliefs sought by the tenant. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* chapter 301 laws of Kenya Act at section 12 (4) provides as follows; “In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit.”
  13. The above provision accords the tribunal additional powers to investigate any complaints relating to controlled tenancies and make orders as they deem fit. In the present case, the tenants have sought for compensation for the losses attributed to the actions of the landlord.
  14. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* chapter 301 laws of Kenya Act at section 12 (1) (i) accords the tribunal as one of its powers the jurisdiction to;
 

“Award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill, and improvements carried out by the tenant with the landlord’s consent;”
  15. The tenants have sought for damages in assessed at Kshs. 5,213,000. They have annexed a valuation report and the valuer testified. The term damages were defined in the case of; *Antique Auctions Ltd vs Pan African Auctions Ltd* [1993] eKLR where the Court of Appeal defined the term damages according to the McGregor book on Damages as follows:
 

The definition of the term, “damages” is set out in McGregor on Damages Fifteenth Edition paragraph 1 as: “pecuniary compensation, obtainable by success, for a wrong which is either a tort or a breach of contract, the compensation in the form of a lump sum which is awarded unconditionally, and is generally, but now not necessarily, expressed in English currency.”
  16. While differentiating between special and general damages the Court of Appeal in the case of; *Antique Auctions Ltd v Pan African Auctions Ltd* [1993] eKLR stated that:
 

“Compensation for a wrong committed could be claimed as general damages or special damages. In general damages compensation cannot be quantified but will be assessed by the court. In the case of special damage, such claim of the loss must be specifically pleaded and strictly proved. Proof of damages is by evidence and the Court will decide each case on balance of probability.”
  17. The Tribunal has had an opportunity to review valuation report. The same despite being prepared by a professional is largely evasive on the actual loss suffered. The figure provided is somewhat exaggerated. Awarded the same would amount to unjust enrichment which this Tribunal cannot countenance. The report fails to also state the profit anticipated but merely provides the sales. In the circumstances and taking cognizance of the actions of the landlord were proven, the Tribunal awards the tenants damages of Kshs. 1,000,000 together with costs assessed at Kshs. 100,000/-



18. Before penning off, it is clear that the tenancy is no longer tenable. The landlord shall refund the rent paid upfront less the rent up to the month of April assessed at Kshs. 20,000/ per month.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**HON. PATRICIA MAY**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the present of Kahindi for the Tenants/Applicants and Atancha for the Respondent/Landlord

