



**Jowi v Muthoni (Tribunal Case E081 of 2023)
[2024] KEBPRT 992 (KLR) (19 July 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 992 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E081 OF 2023
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
JULY 19, 2024**

BETWEEN

ISDORA JOWI LANDLADY

AND

EMILY MUTHONI TENANT

JUDGMENT

1. The landlady moved this Tribunal through a Reference dated 10th May 2023 pursuant to Section 6(1) of Cap 301. She also filed a motion dated 15th June 2023 seeking for an order for inspection of the suit premises by the Tribunal's Rent Inspector. She is also seeking for approval of her termination notice dated 21st March 2023 which was to take effect on 1st June 2023 and that the tenant gives vacant possession of the suit premises. Finally, she is seeking that the OCS Kaptembwa Police Station does ensure compliance.
2. The application is predicated upon the grounds on the face thereof and the affidavit of the landlady annexed thereto wherein she deposes that the tenant was served with a notice of termination of tenancy dated 21st March 2023 which was to take effect on 1st June 2023. The termination notice is attached as annexure "IJ-1" while the affidavit of service is attached as annexure "IJ-2". The tenant being opposed to the notice issued a letter of objection and filed a Reference against it.
3. It is the landlady's contention that the suit premises were wasting away and its general state was bad with leaking ceiling boards, shuttered window panes, overhanging electric wires and caved in roof as evidenced by annexure marked "IJ-3".
4. The application was directed to be served for hearing inter-partes on 27th September 2023. Upon being served, the tenant filed a replying affidavit sworn on 6th October 2023 in which she deposes that she was to undertake all repairs in respect of the suit premises.



5. According to the tenant, the landlady issued a notice to terminate tenancy citing denial of access to the premises and that the tenant had made substantial repairs which had altered the structure of the premises. The tenant denies that she prevented the landlady from entering the premises and deposes that the only repairs made by her was the replacement of window glass which were stoned by protestors along the road.
6. The tenant disputes that the photographs relied upon by the landlady were taken in the suit premises saying that her premises were in good condition and she denies the defects set out in the landlady's affidavit. She states that out of five premises, the landlady had only issued termination notices in respect of only two which shows prejudice. She prays to be given first priority to re-occupy the suit premises should the termination notice be upheld.
7. Through a ruling delivered on 12th January 2024, this Tribunal inter-alia directed its Rent Inspector to visit the suit premises to determine the status thereof in terms of repair works done or to be done and file a report thereon. The status quo was to be maintained pending the hearing of the Reference.
8. The said inspection was done on 19th January 2024 in the presence of both parties and it was observed that the premises was painted in the year 2019 by a liquor Company as promotion for its liquor brand. The tenant installed additional door and window after thieves broke into her shop. The ceiling had stains which showed that there are leakages from the roof and the roof needed repairs. There is a crack on the inner part of the counter. The rooftop is corroded thus causing the leakages which was evident from the ceilings.
9. The landlady filed a witness statement dated 27th March 2024 pursuant to directions given on 29th February 2024 in compliance with Order 11 of the Civil Procedure Rules. The tenant did not comply with the directions but we shall consider his replying affidavit sworn on 6th October 2023 as his witness statement.
10. When the matter came up for hearing on 22nd May 2024, only the landlord appeared in court. Her Counsel indicated that the landlady would rely on her filed witness statement, the Inspector's report and submissions filed earlier. We have not however seen any submissions on record. The matter was therefore reserved for judgement.
11. We are required to determine the following issues in this matter;-
 - a. Whether the landlady's notice to terminate tenancy dated 21st March 2023 ought to be approved or dismissed.
 - b. Whether the landlady's application dated 15th June 2023 ought to be allowed or dismissed.
 - c. Who is liable to pay costs of the reference?
12. Section 4(2) of Cap 301 Laws of Kenya provides as follows;
 - “(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. Section 4(5) of the same Act provides that;

“(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.”

14. We have looked at the notice of termination of tenancy served upon the tenant and noted that the same is in the prescribed form and is for a period of two months and is to that extent valid.

15. The landlady has based the termination notice on the grounds that she had been denied access to the premises and yet she desired to undertake repairs thereon. The tenant had taken upon herself to do substantial changes and repairs which had altered the structure of the premises.

16. Section 7(1)(a) of the same Act provides as follows;

“(1) Where under section 4 of this Act served a notice of termination of a controlled tenancy on the tenant, the grounds on which the landlord seeks to terminate such tenancy may be such of the following grounds as are stated in the aforesaid notice—

- (a) where, under the tenancy under which the tenant holds for the time being, the tenant has any obligations in respect of the repair and maintenance of the premises comprised in such tenancy, that the tenancy ought to be terminated in view of the state of repair of the premises, being a state resulting from the tenant’s failure to comply with the said obligations;

17. In her replying affidavit at paragraph 3, the tenant admits that all repairs and maintenance of the suit premises were agreed upon with the landlady to be done by her. She states that the only repairs done on the suit premises was replacement of window glass which were stoned by angry protestors along the road.

18. The Rent Inspector’s report confirms that the ceiling had stains which showed that there are leakages from the roof and the roof needed repairs. There is a crack on the inner part of the counter. The rooftop is corroded thus causing the leakages which was evident from the ceilings.

19. The landlady has annexed a Public Health notice issued by the County Government of Nakuru on 1st December 2020 giving her 21 days to; replace all the leaking corrugated iron sheet with new one,



replace all the torn and sagging ceiling boards, repaint the entire internal wall surfaces and ceilings with paints of approved colour and quality (bright oil paint recommended), replace all the hanging electrical sockets and cables.

20. It is therefore clear from all the materials placed on on record that there is need to undertake the repairs sought to be carried out by the landlady. We shall therefore approve the termination notice under Section 9(1)(a) of Cap 301 which provides as follows;

- “(1) Upon a reference, a Tribunal may, after such inquiry as may be required by or under this Act, or as it deems necessary—
- (a) approve the terms of the tenancy notice concerned, either in its entirety or subject to such amendment or alteration as the Tribunal thinks just having regard to all the circumstances of the case; or
 - (b) order that the tenancy notice shall be of no effect;
 - (c) and in either case make such further or other order as it thinks appropriate.”

21. In the premises, the landlady’s application dated 15th June 2023 succeeds with costs in line with Section 12(1)(k) of Cap 301 which gives us discretionary powers to make orders for costs in every action before the Tribunal. Being the successful party, the landlady cannot be denied costs.

22. In conclusion, the following final orders commend to us in this matter;

- a. The landlady’s notice to terminate tenancy dated 21st March 2023 is hereby approved.
- b. The landlady’s application dated 15th June 2023 is allowed in terms of prayers 3 & 4 thereof and the tenant is hereby ordered to give vacant possession of the suit premises to the landlady within the next Thirty (30) days hereof failing which, she shall be evicted therefrom by a Licensed Auctioneer who shall be given security by the OCS, Kaptembwa Police Station at her own costs.
- c. The costs of the Reference assessed at kshs 30,000/= are awarded to the landlady against the tenant.

It is so ordered.

JUDGEMENT DATED, SIGNED & VIRTUALLY DELIVERED THIS 19TH DAY OF JULY 2024.

HON GAKUHI CHEGE - PANEL CHAIRPERSON

HON. JOYCE A OSODO - PANEL MEMBER

BUSINESS PREMISES RENT TRIBUNAL

In the presence of;

Ouma for landlady

No appearance by tenant

