



**Juma v Ogendo (Tribunal Case E007 of 2024)
[2024] KEBPRT 1117 (KLR) (13 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1117 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E007 OF 2024
P KITUR, MEMBER
MAY 13, 2024**

BETWEEN

JACOB GOR JUMA LANDLORD

AND

ABRAHAM MARUBE OGENDO TENANT

RULING

A. Parties And Representatives

1. The Applicant Jacob Gor Juma is a Landlord and owner of property known as KISUMU/ MUHORONI TOWNSHIP (SWAHILI VILLAGE)/ 270 in Muhoroni, Kisumu County (suit property).
2. The Landlord acts in person.
3. The Respondent Abraham Marube Ogendo is the Tenant herein and the proprietor of the Business premises located in the suit property.
4. The Tenant acts in person.

B. The Dispute Background

5. The Landlord, vide Notice to Terminate or Alter Terms of Tenancy dated 4th September 2023, notifying the Tenant of termination effective 1st December 2023 on the ground that he intended to use the premise for a period exceeding 18 months.
6. It is the Landlord's case that the Tenant neither objected to the Notice nor filed any Reference before the Tribunal but had blatantly refused to vacate the premises, which necessitated his filing of the Complaint dated 29th February 2024 together with a Notice of Motion Application of even date seeking among others, an order of eviction of the Tenant from the suit property.



7. In response, the Tenant filed a Replying Affidavit sworn on 25th March 2024 raising two main issues being that the Landlord has no locus standi to issue the Notice as he had been paying rent to one Margaret Gor Juma, that the Landlord fraudulently transferred the suit property to himself where succession proceedings over the suit property demonstrated otherwise. Secondly, that the Notice under Cap 301 is only effective after the lapse of 2 calendar months yet the present Notice only gave him one calendar month.

ist Of Issues For Determination

8. The main issues raised for determination are as follows;
- a. Whether the Landlord's Notice to Terminate is valid.

C. Analysis And Findings

Whether the Landlord's Notice to Terminate is valid

10. The provision with relation to Termination and Alteration of the terms of a Tenancy is found in Section 4 of Cap 301 which provides as follows: -

Termination of and alteration of terms and conditions in controlled tenancy

- (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.
- (3) A tenant who wishes to obtain a reassessment of the rent of a controlled tenancy or the alteration of any term or condition in, or of any right or service enjoyed by him under, such a tenancy, shall give notice in that behalf to the landlord 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.
- (5) A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and requires the receiving party to notify the requesting party in writing, within one month after the date of receipt of the notice, whether or not he agrees to comply with the notice.
- (6) A tenancy notice may be given to the receiving party by delivering it to him personally, or to an adult member of his family, or to any other servant residing within or employed in the premises concerned, or to his employer, or by sending it by prepaid registered post to his last known address, and any such notice shall be deemed to have been given on the date on which it was so delivered, or on the date of the postal receipt given by a person receiving the letter from the postal authorities, as the case may be.
11. Before considering whether the notice issued is proper, I will first consider the evidence of service of the Notice as placed before this Tribunal.
12. In seeking to show proof of service of the Notice to Terminate or Alter Terms of Tenancy, the Landlord filed an Affidavit of Service sworn on 26th October 2023 by one Noel Taslima.
13. In the said Affidavit of Service, Noel Taslima stated that on 24th October 2023, he received the Landlord's Notice to Terminate or Alter Terms of Tenancy dated 4th September 2023 and proceeded to effect service of the notice on the same day.
14. Section 4(4) Cap 301 requires that for a termination notice to take effect, then the same should be for a period of not less than two months. It is now settled that two months is taken to mean two calendar months.
15. The date of service of the notice is for all intents and purposes the date on which the person receiving the notice is made aware of the existence of that notice. Time only starts running from the date the Tenant is made aware of the notice.
16. In this case, as at the date the Tenant was made aware of the Notice, he was left with less than two months as the Notice required him to vacate the premises by 1st December 2023. This in turn means the Notice would not enjoy the protection of law for want of sufficient notice.

Orders

- a. The upshot is that the Landlord's Application dated 29th February 2024 fails and is hereby dismissed with costs to the Tenant assessed at Kshs. 6,500/=, recoverable from monthly rent payments.
- b. The Landlord is at liberty to issue a fresh notice no earlier than 30th June 2024.
- c. The Complaint dated 29th February 2024 is settled in those terms.

HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by Hon P. Kitur on 13th May 2024 in the absence of the parties.



HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

