



**Jamiii Booksellers Limited v Musyoki & 3 others (Tribunal Case
E178 of 2024) [2024] KEBPRT 768 (KLR) (24 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 768 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E178 OF 2024
A MUMA, MEMBER
MAY 24, 2024**

BETWEEN

JAMIII BOOKSELLERS LIMITED TENANT

AND

JAMES MUTHEMA MUSYOKI 1ST RESPONDENT

WILSON MUTISYA MUNYAO 2ND RESPONDENT

FRANCIS MWANZIA MUNYAO 3RD RESPONDENT

TITUS 4TH RESPONDENT

RULING

A. Parties And Representatives

1. The Applicant, Jamii Booksellers Limited is an occupant in the business premises located at Machakos/Block11/73 within Machakos Town the suit property (hence the tenant).
2. The firm of Ngala Morara & Co. represents the Tenant.
3. The Respondents, are the owners of the suit property located at Machakos/Block 11/73 Town within Machakos County (hence the Landlords).
4. The firm of A.M Murunga & Company Advocates represents the Respondents in the matter.

B. Background Of The Dispute

5. The Tenant moved this tribunal vide a Reference and Notice of Motion Application dated 7th February 2024 seeking for; the application to be certified urgent, the Respondents be ordered to re-open the premises, and that the OCS Machakos Police Station to assist in compliance of the orders.



6. The Tribunal issued orders dated 8th February 2024 and certified the matter urgent, ordered the Landlords to reopen the premises, the landlords be prohibited from unlawfully intercepting or harassing the tenant, the OCS Machakos Police Station to assist with compliance of the orders and that the application be served to the Landlords.
7. In response, the Landlord filed a Replying Affidavit dated 16th February 2024 In the Replying Affidavit the Landlord stated that they had not locked the premises and that they had given a 3 month notice for the tenant to vacate the premises because it was subject to a pending succession suit.
8. The landlords filed a further replying affidavit stating that they had not locked the premises and that they had given a notice on the intention to renovate the premises.

C. The Tenant's Claim

9. The tenant claims that the Landlord has locked his business premises therefore denying it access to the same.
10. It is therefore the Tenant's case that the Landlord's action to lock the premises is illegal and hindering the running of his business.

D. The Landlord's Claim

11. It is the Landlords case that they had given a notice to the tenant on the intention to terminate the tenancy and that they had not locked the business premises.

E. List Of Issues For Determination

12. I have carefully perused the material placed before this court by the parties and it is my considered opinion that the following issues fall for determination:
 - a. Validity of the Notice and whether the tenant should be allowed to remain in the premises

H. Analysis & Determination

Validity of the Notice and whether the tenant should be allowed to remain in the premises?

13. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (hereinafter 'the Act') Chapter 301 Laws of Kenya Act at 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 service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.

14. In the case of *Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited*, Civil Appeal No. 203 of 1994 it was stated 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. 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.”

15. Section 7 of the Act provides for the grounds within which Landlord is allowed to issue a termination notice and at subsection (f) it provides as follows;

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—

That on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises;

16. In this case the Landlords avers to have issued a notice to terminate to the tenant and the same seems to be in form of a letter dated 23/01/2024 and is for a period of 4th December 2023 to 19th January 2024 a period of less than 2 months as required by CAP 301.
17. The landlords also claim that the tenancy notice had been issued for the reason of renovating the premises but there has been no evidence of renovation provided being approved plans and or proof of funds. The letter states new owner and no evidence of sale has been provided, it is also stated that they are a family and they want access to their property again no evidence of succession cause being undertaken has been provided. The Tribunal is therefore not convinced the landlord is entirely candid about the reason he/ They wants the Tenants to vacate.
18. The tenant has provided the tribunal with photographs of the closed premises attached to the affidavit sworn by Anthony Kimeu dated 11th April 2024.
19. Based on the above, the Landlord’s action to close down the Tenant’s premises was illegal and a contravention of CAP 301.

I. Orders

The upshot is that the Tenant’s Reference and Application dated 7th February 2024 are upheld in the following terms;

- a. The Landlords shall reopen the Tenant’s business premises immediately.
- b. The Landlord is at liberty to issue a fresh notice of termination for a period of 2 months plus 1 day if they so wish.
- c. The Landlords to advise the tenant on the account to use for rent payment failure to which the rent be deposited in the Landlords’ Advocates account Andrew Murunga Advocate.
- d. The OCS Machakos Police station to assist with compliance of the orders.
- e. Each party shall bear their own costs.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL



RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 24TH DAY OF MAY 2024 IN THE PRESENCE OF ANDREW MURUNGA FOR THE LANDLORDS AND IN THE ABSENCE OF THE TENANT

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

