



**Mollet v Mukururi (Tribunal Case E769 & E668 of 2023 (Consolidated))
[2023] KEBPRT 603 (KLR) (22 September 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 603 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E769 & E668 OF 2023 (CONSOLIDATED)
A MUMA, AG. CHAIR
SEPTEMBER 22, 2023**

BETWEEN

SAMUEL MOLLEL AKA LESENGERE LUKUMAY APPLICANT

AND

MWANGI KAGUARA MUKURURI RESPONDENT

JUDGMENT

A. Parties And Representatives

1. The Applicant Samuel Mollet Aka Lesengere Lukumay is the Tenant and rented space on the suit property being Shop No. 8 located on NAIROBI/BLOCK82/1775 within Tena Estate. (hereinafter known as the 'tenant')
2. The tenant/applicant appears in person in this matter.
3. The Respondent Mwangi Kaguara Mukururi is the landlord and rented out space on the suit property to the tenant (hereinafter known as the 'Landlord')
4. The landlord/respondent appears in person in this matter.

B. The Dispute Background

5. The landlord issued the tenant with a Notice to Terminate tenancy dated 17th April 2023 which was to take effect on 1st July 2023. The grounds upon which the landlord sought to terminate the tenancy are that the tenant had defaulted in payment of rent for a period of 9 months.
6. The Tenant failed to comply or oppose the Notice. As a result, the landlord has filed a Reference and a Notice of Motion application dated 3rd July 2023 under section 12 of the Landlords and Tenants (Shops, Hotels and Catering) Establishments Act Cap 301. The landlord was seeking orders that



tribunal be pleased to uphold the termination notice issued to the tenant and that the tenant be compelled to clear their outstanding arrears of Kshs. 112,000.00.

7. The Tribunal proceeded to grant the landlord's orders as prayed on 7th August 2023.
8. It was after the issuance of these orders that the tenant filed their application dated 10th August 2023 seeking orders that the Tribunal compel the landlord to re-open the premises, be restrained from evicting them and that the tribunal allows them to offset their arrears, which according to them stood at Kshs. 75,000.00 in installments.

C. The Tenant's Claim

9. The Tenant has filed a Reference and a Notice of Motion Application dated 10th August 2023 seeking that the landlord be compelled to re-open the premises and that they be allowed to offset their arrears in installments.

D. The Landlord's Claim

10. The landlord has filed a Reference and Notice of Motion Application dated 3rd July 2023 seeking to uphold and enforce the validity of the Notice to terminate tenancy issued to the tenant.
11. The landlord has also filed a Replying Affidavit dated 23rd August 2023 in opposition to the tenant's application.

E. List Of Issues For Determination

12. The issues raised for determination are as follows;
 - a. Whether the Termination Notice issued by the Landlord and the reasons advanced are valid?

F. Analysis And Findings

Whether the Termination Notice issued by the Landlord and the reasons advanced are valid?

13. The tenant approached this Tribunal seeking orders restraining the landlord from proceeding with the intended termination of tenancy by virtue of the notice issued to the tenant.
14. The landlord issued the tenant with a Notice to terminate tenancy dated 17th April 2023 which was to take effect on 1st July 2023. The landlord stated that the grounds upon which they wanted to terminate the tenancy are that the tenant had defaulted in payment of rent being Kshs. 112,000.00.
15. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) 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.

16. Section 4(4) further provides that:

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



17. 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.”

18. In this case the Landlord issued the tenant with a Notice to terminate tenancy on 17th April 2023 which was to take effect from 1st July 2023. Based on the above provision, the said notice was to take effect after more than two months which is as per the Provisions of CAP 301. As such the said notice can be deemed to be valid in relation to the period accorded to the tenant.
19. Having established that the Notice issued by the Landlord to the tenant was valid, in relation to the period, the other question for determination before the Tribunal is with regards to the reasons advanced for wanting to terminate the tenancy.
20. In the current case the notice issued by the Landlord stated that the grounds for termination were that the tenant had defaulted in rent payment being Kshs. 112,000.00 as at the time of issuing the notice.
21. The landlord in an attempt to prove his position has annexed statements of accounts showing the rent arrears owed. The same have not been opposed by the tenant.
22. The tenant has however admitted to being in arrears of only Kshs. 75,000.00 which they have failed to prove to this Tribunal how the same was arrived at.
23. I also observe that based on the strength of the orders issued by the Tribunal on 7th August 2023, the landlord proceeded to rent out the premises to another tenant. As such restoring the tenant to the premises would be an order in futility.
24. I also observe that the landlord does not deny being in possession of the tenant's goods he has however stated that he will only release the same upon clearing of the arrears by the tenant.
25. Based on the above I therefore proceed to order as follows;

G. Orders

- a. The upshot is that the Landlord's Reference and Application dated 3rd July 2023 are hereby allowed in the following terms;
- b. The tenant shall offset the arrears owed to the landlord being Kshs. 112,000.00 as at July 2023 and any other amounts accrued thereafter within 30 days after which the landlord shall return all the goods belonging to the tenant failure to which the landlord can dispose off the goods.
- c. The landlord shall retain possession of the premises and carry-on business with the new tenant.
- d. The orders shall apply to Case No. E668 of 2023 as well.
- e. The matter is hereby marked as settled in those terms.



f. No orders as to Costs.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 22ND DAY OF SEPTEMBER 2023 IN THE PRESENCE OF MWANGI THE LANDLORD IN PERSON AND IN THE PRESENCE OF SAMWEL THE TENANT IN PERSON.

HON A. MUMA

AG CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

