



**Maina v Mohamud (Tribunal Case E130 of 2024)  
[2024] KEBPRT 1428 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1428 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E130 OF 2024  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
SEPTEMBER 25, 2024**

**BETWEEN**

**DOUGLAS MAINA ..... TENANT**

**AND**

**MOHAMED MOHAMUD ..... LANDLORD**

**RULING**

1. This Ruling is on the Consolidated files herein namely Mombasa BPRT Case No. E130 of 2024 which was originated by the Tenant against the Landlord and BPRT Case No. E134 of 2024 which was originated by the Landlord against the Tenant.
2. By an order of this court issued by the chairperson, Hon. Cyprian Mugambi on the 15.7.2024, the two suits herein were Consolidated and ordered heard together with Case No. E130 of 2024 being the lead file. In the lead file, the Tenant had the Reference dated 23.5.2024. the same was anchored on Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) (Cap 301) hereinafter “the Act.”
3. The Complaint by the Tenant was that the “The Landlord has sought to terminate my tenancy without following the prescribed form. That the Landlord is using the police to threaten and intimidate me to vacate the premises.”
4. Accompanying the Reference was the notice of motion Application of even date. The same was presented under a certificate of urgency and sought for the following reliefs;-
  - a. Spent
  - b. That the Landlord/Respondent be restrained by an order of injunction from evicting, threatening, using, the police or in anyway interfering with the Tenant’s tenancy in a shop at Mombasa Likoni opposite Office Mart till the complaint herein is heard and determined.



- c. That the order be served on the DCI Likoni police station for information.
  - d. That the order be granted in the interim.
  - e. That the costs of this Application be provided for.
5. The Tenant in the Application grieved that the Landlord had issued him with an illegal notice to vacate by a letter dated 7.05.2024 and was required to vacate by the 7.06.2024- Annexure DM1. That he had defied the said notice by his Advocates letter dated 22.5.2024- Annexure DM2 as the same was not in compliance with the Act.
  6. That at the time he was issued with the notice to vacate, he had cleared all the rents in arrears in the presence of witnesses namely; Anthony Nderi and Mohammed Mohamed Awabugale and that the parties had agreed to co-exist in harmony.
  7. He therefore sought that this court secures him quiet possession. The Landlord in response filed the Replying affidavit sworn on the 6.06.2024 in it he asserted the following;-
    - i. That he rented his shop to the Tenant at Kshs. 10,000/= and where the Tenant was to pay Kshs. 4,000/= and use the balance of Kshs. 6,000/= to recover a loan of Kshs. 100,000/= that he had advanced the Landlord.
    - ii. That thereafter, the parties entered into yet another understanding and whereby the Tenant was to pay the Landlord Kshs. 5,000/= as rent and use the balance of Kshs. 5,000/= to recover his costs of renovating the premises at Kshs. 297,200/=.
    - iii. That by the 13.7.2022 all the amounts owed as loan and costs of renovations had been recovered but that the Tenant refused to pay the rent at Kshs. 10,000/=.
    - iv. He reported the Tenant to the village elder, the chief and eventually to the DCI and where he was compelled to keep away from the shop until a settlement had been reached.
  8. Eventually the Tenant filed the submissions dated 12.7.2024. The same largely insisted that the notice to vacate was not in compliance with the Act and the same was therefore without any effect nor consequence.
  9. In BPRT Original Case No. E134 of 2024, the Landlord by his Reference dated 28.5.2024 had complained that the "Tenant has defaulted in paying rent for a period of 2 years and has locked the premises and deserted to unknown."
  10. Accompanying the Reference is a motion of the even date and which sought for the following reliefs;-
    - i. That pending the hearing and determination of this Application inter partes, the Honourable Tribunal court be pleased to direct and/or order the Tenant to settle all the outstanding rent arrears in the sum of Kshs. 140,000/= being the rent arrears accrued for the last two (2) years at the rate of Kshs. 10,000/= per month. That the Respondent/Tenant be compelled to open the premises and give the vacant possession ALTERNATIVELY, the Landlord be granted orders to break the door of the premises with the assistance of the area chief.
    - ii. That the Tenant be ordered to vacate the premises and let the subject premises in vacant possession.
    - iii. That the OCS Likoni police station to ensure compliance with the orders.
    - iv. The costs of this Application and the entire suit be borne by the Tenant/Respondent.



11. The Tenant in response to the Application by the Landlord filed the Replying affidavit sworn by himself on the 23.8.2024. In opposing the same he asserted that;-
  - a. That the Landlord's reference and Application were merely filed to counter his suit namely BPRT Case No. E130/2024.
  - b. After the Landlord issued him the notice to vacate, they met in the presence of witnesses and all issues between them were settled.
  - c. That it was the Landlord who had locked the shop and was using the police to harass him.
  - d. He did not owe any rent in arrears to the Landlord.
12. We have considered all the pleadings on record including the Tenant's submissions on record and we are of the view that the only issues for determination at this level are whether the notice of termination of tenancy dated 7.05.2024 is lawful and who should bear the costs of the Applications herein.
13. We opine that the question of whether the Tenant is in any rent arrears and on the person to bear liability for closing down the demised premises can only be determined by oral evidence and on first compliance with order 11 of the Civil Procedure Rules.
14. On whether the notice of termination of tenancy dated 7.05.2024 is lawful, we would wish to reflect on the provisions of Section 4(2) of the Act which 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.”
15. The Act also specifies the timelines which such notice should take. Section 4(4) of the Act provides that;-

“No tenancy 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.”
16. Indeed such a notice for termination must contain the grounds provided under Section 7(1) of the Act for such a notice to prevail. The section provides that;-

“ 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 be such of the following grounds as are stated in the aforesaid notice.”
17. Finally, the Act requires complete compliance in terms of content and form on all the notices as envisaged under Section 4 of the Act. Regulation 4(1) of the Regulations to the Act prescribes the form for such notices. It provides that;-

“ A notice under Section 4(2) of the Act by a landlord shall be in form A in the schedule to these Regulations.”
18. A casual look at the purported termination notice by the landlord dated 7.5.2024 does not draw any compliance with the law and the same is therefore of no effect nor consequence to the landlord and tenant relationship herein. We would therefore proceed to declare the same as illegal. In this, we draw



from the wisdom of the case of; Manaver N. Alibhai t/a Diani Boutique vs South coast Fitness & Sports Centre Ltd Civil Appeal No. 203 of 1994 where the court of Appeal 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 that in every 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 allowed 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 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.”

19. We wish to register our absolute concurrence with the reasoning by the court of Appeal and also confirm that the same is binding on us. In short, the Landlord's purported termination notice dated 7.05.2024 fell far short of the threshold set by the law.
20. On the question of costs, it is our view that there would be no reason nor justification to depart from the conventional wisdom of Section 27 of the Civil Procedure Act and the proviso thereof and we therefore award costs to the Tenant/Applicant.
21. In the final analysis, we make the following orders;-
  - a. That the Tenant's Application dated 23.5.2024 is granted in terms that the Tenant shall be afforded quiet possession of the demised premises.
  - b. That the Tenant shall continue paying rent as and when it falls due and in any event always in advance and by the 5<sup>th</sup> day of the month in currency.
  - c. That the parties shall comply with order 11 of the Civil Procedure Rules by filing all their evidence and documents and exchange the same within thirty (30) days of the date hereof.
  - d. That the Landlord shall pay to the Tenant costs assessed at Kshs. 20,000/= to be offset from the rent payable.

Those are the orders of the court.

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

**HON. NDEGWA WAHOME, MBS**

**PANEL CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

**AND**

**HON. JOYCE MURIGI**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Mr. Kenzi the Counsel for the Tenant and M/S Nanjali the Counsel for the Landlord.



Court: Mention on the 28.10.2024 to confirm compliance with order 11 of the Civil Procedure Rules and take a date for hearing

