



**Macharia v Makali (Tribunal Case E146 of 2023)
[2023] KEBPRT 1170 (KLR) (8 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1170 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E146 OF 2023
N WAHOME, MEMBER
NOVEMBER 8, 2023**

BETWEEN

ESTHER NUNGARI MACHARIA TENANT

AND

PATRICK W. MAKALI LANDLORD

RULING

1. The Applicant herein approached this court by way of a reference dated 22.8.2023 and which was founded under Section 12(4) of the [Landlord and Tenant \(shops, hotels and catering establishments\) Act](#) (Cap 301) hereinafter referred to as “the Act.”
2. The Tenant’s complaint was that;

“The landlord has issued me with an illegal notice of terminating my Tenancy (*sic*) dated 21st September 2023 attached herein. I request the Rent Tribunal Court and OCS Bungoma police station do order the landlord to use the right procedure of terminating my tenancy and stop harassing me with threats of eviction.”
3. The termination notice alluded to was a letter dated 21.09.2023 issued to the Tenant by the landlord’s Advocates namely Situma & Company Advocates. The same required the Tenant to vacate the demised premises by 21.12.2023 at the pain of being forcefully evicted.
4. The letter by the said Advocate stated that the notice of termination was founded on the ground that;

“our client is now of the opinion that you should make arrangement and vacate the same within ninety (90) days from the date hereof to give way for himself to occupy the same for he wants to carry out his own business in that premises.”



5. In the said letter, the Advocate for the landlord concluded that:-
- “We are kindly requesting that you should be out of the premises by 21.12.2023.”
6. It is this particular letter which was clothed as a termination notice that triggered the reference herein.
7. On being served with the reference, the landlord never filed any responses but was allowed by this Tribunal to render his evidence in defence of the reference herein and in support of the purported notice of termination of Tenancy issued vide the letter dated 21.09.2023.
8. When the matter came up for hearing on the 17.10.2023, the Tenant testified and called her husband as her sole witness. On his part, the landlord also testified and called his wife who testified as DW2.
9. The evidence of the Tenant was that:-
- i. That she operated a shop within Title No. E.Bukusu/S.Kanduyi/10517 which is within Bungoma Township and owned by the Respondent Mr. Patrick W, Makali.
 - ii. She had been his Tenant for the last two (2) years but that by a letter dated 21.9.2023 he issued her a notice to terminate the tenancy.
 - iii. She had been given three (3) months to vacate the premises which housed shop. She thought the notice was very short and illegal and therefore approached this tribunal.
 - iv. That she did not have alternative accommodation for her shop and therefore would need more time to plan for her business.
10. On his part, John Peter Macharia, the husband to the Tenant and who testified as PW2 testified that:-
- i. The landlord wanted to terminate his wife’s tenancy without giving her sufficient time.
 - ii. As a family, they solely relied on the shop for their livelihood.
 - iii. They had invested a lot in the shop and the least time they would need to move out is one (1) year.
 - iv. Among the investments at the shop was putting up shelves among other developments.
 - v. The landlord had many shops within the building and wondered why it was only his wife’s tenancy that was targeted for termination.
11. On his part, the landlord in support of his notice of termination of tenancy and in defence of the reference testified that:-
- i. He had several business premises and he had allocated one to his wife and another to a son.
 - ii. He retired as a teacher in the year 2020 and has since been running a poultry business which is now very expensive and unmanageable.
 - iii. He now wants to run a different business and it therefore called for him to require one of his tenant’s to vacate to allow room for his intended business. This fell on the Applicant.
 - iv. His home is within the building where the demised premises is located therefore easy for him to run the intended business.



- v. Through the Counsel of an Advocate, he issued the Applicant a termination notice of the tenancy vide a letter dated 21.9.2023. The said notice was to take effect on the 21.12.2023. He therefore asked that the notice be effected.
12. The landlord called Mildred Makokha his wife as a witness. She testified as DW2. The gist of her evidence was that:-
- i. The Tenant had a shop a few meters from her own shop. She is the one who introduced her to her husband.
- ii. Her husband was now old and was unable to continue with poultry farming which he had been undertaking.
- iii. He therefore required a room within their building where he intends to run a less labour intensive business and therefore the tenant had to give way.
- iv. She had initially approached the tenant to freely give vacant possession of the demised premises but she declined and even reported her to the area chief. The chief was unable to resolve the issue.
- v. Thereafter, she saw the court summons. She could not understand as to why the tenant took them to court. She asked that the tenant leave the demised premises as notified.

Analysis and findings

13. Having looked at the dispositions by the parties, the law and legal precedents, it is my considered view that the issues for determination in this reference are the following:-
1. Whether the notice of termination of tenancy was in compliance with the law.
2. Who should bear the costs of this reference.

Whether the notice of termination of tenancy was in compliance with the law.

14. Section 4(2) of the *Landlord and Tenant (shops, hotels and catering Establishments) Act*, Cap 301 of the laws of Kenya (hereinafter referred to as the Act) provides that:

“A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the Tenant, any term or condition, or of any right or service enjoyed by the under, such a tenancy, shall give notice in that behalf to the tenant in the Prescribed Form.”

Section 4(3) of the *Act* provides that:-

“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 (1) month after the date of receipt of the notice, whether or not he agrees to comply with the notice.”



15. Section 7(1)(g) of the [Act](#) provides that:-

“Subject as herein provided, that on the termination of the tenancy, the landlord himself intends to occupy for a period of not less than one (1) year the premises comprised in the tenancy for purposes of a business to be carried on by him therein, or at his residence.”

16. The [landlord and Tenant \(Shops, Hotels and Catering Establishments\) \(Tribunal\) \(forms and Procedure\) Regulations](#), 1966 (hereinafter referred to as “The Regulations”) under Regulation 4(1) 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.”

17. It is apparent that the purported notice by the Landlord in his Advocates letter did not comply with Sections 4 and 7 of the [Act](#) nor Regulations 4(1) of the [Regulations](#).

18. The aforesaid letter did not require the tenant to indicate whether he agrees with the notice of termination or not pursuant to Section 4(6) of the [Act](#), whether he wanted to use the demised premises for a period of over one (1) year pursuant to Section 7(1)(g) of the [Act](#) and indeed did not comply with Regulations 4(1) of the [Regulations](#). Therefore, at the outset, the purported notice by the landlord vide his Advocates letter dated 21.9.2023 was null and void ab initio and of no effect.

19. This issue has been exhaustively dealt with by different courts and the conclusion has always been and irresistibly so that compliance with the law and regulations in issuance of termination notice of a tenancy must be strict. A straight jacket so to say.

20. In ELC Appeal No. 26 of 2016 (Formerly HCCA No. 197 of 2015) at Nairobi [Fredrick Mutua Mulinge t/a Kitui Uniform v Kitui Teachers Housing Sacco Ltd](#); The court while quoting with approval the case of; [Mumavor N. Alibhai t/a Diani Boutique & South Coast Fitness & Sports Center Limited](#) Mombasa C.A. No. 203 of 1994 had this to say:-

“The Appellant chose to file a reference under Section 12(4) of the [Act](#) instead of Section 6 thereof as there was no obligation to file a reference to a defective notice by the Respondent.”

21. In the present case, I am of the view that the Tenant was also right in filing a complaint under Section 12(4) of the [Act](#) instead of Section 6 thereof in line with my earlier findings herein above.

22. In the case of; [Manaver N. Alibhai](#) (*supra*), the court on the need for strict compliance with the [Act](#) stated thus:-

“The [Act](#) lays down clearly and in details the procedure for 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.”



23. In the case of; *Warshidas & Company Limited v Nyali Air Conditioning & Refrigeration Service Limited*, C.A. No. 205 of 1995, the court stated as follows:-

“The notice to quit purportedly relied on by the defendant in this Appeal is by no means a notice which in anyway complies with Form A as prescribed in the *Act*. Such notice can only have been given pursuant to the provisions of Section 7(1)(g) of the *Act*. The notice to quit given or issued by the defendant was clearly void and had no effect in law on the plaintiff’s tenancy and the plaintiff was under no duty, legal or otherwise to react to it.”

24. In HCCA No. 120 of 1997 at Nairobi [1972] EA 512, *Lali v Jeypee Investments Limited*, the court had this to say;-

“The *landlord and Tenant Act* laid down a code which Parliament intended to be followed and if a landlord does not give notice of termination as prescribed, the notice will be ineffectual ...

This is an *Act* which requires, in so far as the giving of notice is concerned, absolute and complete not merely substantive compliance with its peremptory provisions.”

25. It is therefore clear that the purported notice by the landlord by his letter dated 21.9.2023 was null and void for failing to comply with Sections 4(2), 4(6) and 7(1)(g) of the *Act* and Regulations 4(1) of the *Regulations*. The letter was not a notice in the prescribed form provided for under the *Act*. In view of the above, the Tenant’s reference dated 22.8.2023 which was filed under, Section 12(4) of the *Act* is properly before this Tribunal.

26. In the final analysis and for all the foregoing reasons, I find that the Tenant’s reference is merited. I will allow the same on the following terms:-

1. That the landlord/Respondent’s notice to terminate the Tenant/Applicant’s tenancy on plot No. E.Bukusu/S.Kanduyi/10517 dated 21.9.2023 is declared illegal, null and void and of no effect nor consequence.
2. The Respondent is restrained from evicting the Tenant from plot No. E.Bukusu/S.Kanduyi/10517 without following the procedure laid down under the Act.
3. The landlord shall pay the Tenant costs assessed at Kshs. 20,000/=.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF NOVEMBER 2023.

HON. NDEGWA WAHOME (MBS)

MEMBER

8.11.2023

Delivered in the presence of both the Tenant and the Landlord

