



Warui v Karoki (Tribunal Case E003 of 2023) [2023] KEBPRT 434 (KLR) (17 July 2023) (Ruling)

Neutral citation: [2023] KEBPRT 434 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E003 OF 2023
A MUMA, MEMBER
JULY 17, 2023**

BETWEEN

HELLEN W WARUI APPLICANT

AND

ANNAH WANJIKU KAROKI RESPONDENT

RULING

A. Parties And Their Representatives

1. The Respondent/Landlord (hereinafter referred to as “the Landlord”) is the owner of various premises known as Magutu/gaikuyu/18 Gitunduti Plot (hereinafter referred to as “the premises”) and has let out the premises to the Applicant/Tenant.
2. The Landlord is represented by the firm of Kebuka Wachira & Company Advocates.
3. The Applicant/Tenant (hereinafter referred to as “the Tenant”) is a Tenant of the Landlord and occupies the premises.
4. The Tenant appears in person in this matter.

B. Dispute Background

5. The Tenant claims that she has been served with an eviction notice by the Landlord. According to the Tenant, the said notice is defective and illegal.
6. On the other hand, the Landlord claims that she issued a Notice to Terminate Tenancy to the Tenant as she required to reconstruct the premises for a family business.
7. On January 12, 2023, this Tribunal issued various orders which include restraining the Landlord from interfering with the Tenant’s peaceful occupation of the premises and compelling the Tenant to pay the monthly rent as agreed with the Landlord.



C. The Tenant's Case

8. The Tenant filed a Reference dated January 9, 2023 and an application of even date wherein she stated that she had been issued with an eviction notice that does not comply with the provisions of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301.
9. Additionally, the Tenant stated that the Landlord had disconnected water supply to the premises. It is the Tenant's case that the Landlord has taken these actions despite the fact that she has paid all the rent and does not have any arrears.

D. The Landlord's Case

10. On March 7, 2023, the Landlord swore a Replying Affidavit stating that she issued the Tenant with a Notice to Terminate Tenancy dated October 14, 2022, which Notice was to take effect on January 1, 2023.
11. The Landlord claims that she needs the premises for a family business. She therefore issued the said notice to enable her obtain vacant possession of the premises and do some repairs on the premises.
12. She refuted the claim by the Tenant that she had disconnected water supply to the suit premises. Further, she stated that the Tenant had failed to provide evidence of her imminent eviction and also failed to satisfy the grounds for the grant of an injunction.

E. Issues For Determination

13. I have considered the Tenant's application and the reply thereto and it is my considered view that the main issue that is before this Honorable Tribunal is:
 - i. Whether the Notice of Termination of Tenancy and the reasons advanced are valid ?

F. Analysis And Determination

14. The *Landlord and Tenants (Hotels, Shops and Catering Establishments) Act* Cap 301 ("the Act") requires a Landlord who wishes to terminate a controlled tenancy to issue a notice in the prescribed form. Section 4 of the Act provides as follows;
 4. Termination of, and alteration of terms and conditions in, controlled tenancy
 - (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.
15. In the case of *Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited*, Civil Appeal No. 203 of 1994 the Court of Appeal held 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.



16. Additionally in the case of *Nandlal Jivraj Shah & 2 others (all trading as Jivaco Agencies v Kingfisher Properties Limited)* [2015] eKLR the Court of Appeal pronounced itself as follows;

“The procedure of terminating a controlled tenancy is contained in the Act. Under Section 4(1) thereof, termination of controlled tenancies can only be undertaken under the purview of the Act as follows: -

4(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....” (Emphasis added)

17. In the present matter before this Honourable Tribunal, it is not clear whether the Landlord issued any Notice to Terminate Tenancy as provided under the schedule to the *Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations*, 1966. I say so because the Notice of termination of Tenancy that is the main point of contention was not produced before this Tribunal.
18. The provisions of the *Act* with respect to issuing a notice are couched in mandatory terms. Without the said Notice to Terminate no eviction can occur the landlord fails to produce the same neither did the tenant and where no evidence is produced the burden of proof in a proceeding lies on the person who would fail if no evidence at all were given by either side. Section 108 of the *Evidence Act*.

G. Orders

19. The upshot is the Tenant’s Reference and Application dated January 9, 2023 are hereby dismissed in the following terms:
- The Landlord shall be at liberty to issue a fresh two months’ notice
 - Each party shall bear their own Costs.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by **Hon A. Muma** this 17th Day of **July 2023** in the absence of parties.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

