



**Saifee Investment Limited v Clement O. Sheikh t/a Oriang General Green Grocers
(Tribunal Case E071 of 2024) [2024] KEBPRT 1365 (KLR) (6 September 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1365 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E071 OF 2024
P MAY, MEMBER
SEPTEMBER 6, 2024**

BETWEEN

SAIFEE INVESTMENT LIMITED LANDLORD

AND

CLEMENT O. SHEIKH T/A ORIANG GENERAL GREEN GROCERS. TENANT

JUDGMENT

1. The landlord filed the complaint dated 8th March, 2024. The complaint primarily sought to give into effect the notice of termination dated 27th September, 2023 which the landlord had issued against the tenant. It was the landlord's assertion the tenant's ought to have vacated the demised premises after the lapse of the notice period. Contemporaneous with the complaint, the landlord filed an application on an even date brought by way of certificate seeking almost similar orders of eviction.
2. The application was placed before the Tribunal on 12th March, 2024 whereby the parties were directed that both the application and reference would be canvassed simultaneously. The parties filed their respective responses and submissions. I have considered the same and would proceed as follows:

Landlord's case

3. It was the landlord's testimony that the tenant had leased the demised premises at an agreed monthly rent of Kshs. 20,000/-. The landlord averred that the tenant had been irregular in making rent payments. Subsequently the landlord was forced to issue a notice of termination dated 27th September, 2023. The notice was to take effect on 1st December, 2023 which was a period which exceeded 2 months as envisaged under the Act.

Tenant's case

4. The tenant stated that they had been on the demised premises for over 30 years. The tenant claimed that they had been constantly harassed by the landlord from the year 2018. He stated that at some



point the landlord instructed auctioneers who carted away their goods and even though he later paid the rent arrears, the goods were never returned nor was he compensated.

5. It was the tenant's position that he made attempts to be compensated for the goods carted away which he valued at Kshs. 120,000 and sought to have the same offset part of the rent arrears.

Analysis

6. The crux of the present dispute is the notice of termination issued by the landlord dated 27/9/2023. The tenant has not disputed service of the same. The said notice was premised on the grounds that the tenant had become a perennial rent defaulter.

7. It is prudent that the Tribunal determines the validity of the said notice. In addressing this issue, I shall consider two aspects: the formal requirements of a notice for termination of a tenancy agreement and the Landlord's grounds for termination of the tenancy.

- a. Formal requirements of notice of termination of a tenancy.

8. Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 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 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."

9. Additionally, Section 4(4) 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, unless the terms and conditions of the tenancy provide for a period exceeding two months or the parties to the tenancy agree in writing to a lesser period of notice.

10. The two requirements therefore for a valid notice of termination of the tenancy is first, that the notice shall be in the prescribed form and secondly, that the notice shall not take effect until after expiry of two months, or such notice period as may be agreed by the parties. This was emphasized in the case of *Munaver N Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited* [1995] eKLR, where the Court of Appeal at Mombasa in finding that the notice of termination of the tenancy was void for failing to comply with Section 4 of the Act 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 grounds on 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."

11. The notice to vacate was issued by the Landlord on 27/9/2023, and required the Tenant to vacate the premises by 1/12/2023. I note that the duration of the notice exceeded the two months' period as prescribed by the Act.
12. Additionally, according to Section 4(2) mentioned above, the notice of termination of tenancy should be the prescribed form, specifically Form A, as provided for in the Landlord and Tenant (Shops, Hotels



and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966. I have perused the notice in question and the same was in the prescribed form.

13. I will now delve into the question of whether the tenant had accrued rent arrears. The tenant has admitted to having fallen into arrears in the past and accrued arrears. Section 7 (1) (b) of Cap 301 does not specify how many times a tenant should default in paying rent before a landlord is entitled to terminate such a tenancy. It provides thus:
 1. Where under section 4 of this Act a landlord has 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 are stated in the aforesaid notice –
 - b. that the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying which has become due or payable.”
14. In the present circumstances the tenant did not have any basis to refuse the notice by the landlord where evidence of non-payment was self-evident at the time the notice was issued & not withdrawn.
15. The result of the above finding is that the notice of termination is upheld. The same was lawful and regular.
16. In the end, the following orders commend itself:
 - a. The complaint dated 8/3/2024 is allowed in terms of prayers 1-5.
 - b. The landlord is awarded costs assessed at Kshs. 25,000/-

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF SEPTEMBER, 2024.

HON. PATRICIA MAY

MEMBER

Business Premises Rent Tribunal

Delivered in the absence of the parties

