



**Wakesho & another v Chemuni (Tribunal Case E158 of 2022)  
[2023] KEBPRT 228 (KLR) (Commercial & Admiralty) (26 April 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 228 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
COMMERCIAL AND ADMIRALTY  
TRIBUNAL CASE E158 OF 2022  
A MUMA, VICE CHAIR  
APRIL 26, 2023**

**BETWEEN**

**PATIENCE WAKESHO ..... 1<sup>ST</sup> TENANT**

**SIMON RUTO ..... 2<sup>ND</sup> TENANT**

**AND**

**JUSTIN KEMBOI CHEMUNI ..... LANDLORD**

**RULING**

**A. Parties And Representatives**

1. The 1<sup>st</sup> applicant Patience Wakesho is the tenant and rented space on the suit property known as Havana Liquor Store in London Ward Nakuru county. (hereinafter known as the ‘tenant’)
2. The 2<sup>nd</sup> applicant Simon Rutto is also a tenant and rented space on the suit premises. ( hereinafter the ‘tenant’)
3. The firm of Karuga & Co Advocates represent the 2<sup>nd</sup> applicant/tenant in this matter.
4. The respondent is the landlord and rented out space to the tenant. (hereinafter known as the ‘landlord’)
5. The firm of Mbatia Kirui & Associates represent the landlord/respondent in this matter.

**B. The Dispute Background**

6. The tenant has filed a reference and application dated November 24, 2022 under section 12 (4) of the [Landlords and Tenants \(Shops, Hotels and Catering\) Establishments Act](#) cap 301 seeking orders that the landlord be compelled to re-open the premises failure to which the tenant be granted break in orders as well as that the landlord be restrained from interfering with their possession.



7. The tenant also filed another application dated December 7, 2022 this time seeking that the court declare the notice to terminate tenancy issued by the landlord dated December 6, 2022 illegal.
8. On December 28, 2022 the 1<sup>st</sup> applicant entered into a consent with the landlord whose terms were outlined in an agreement dated December 15, 2022 and as such the case was withdrawn.

### **C. The Tenant's Claim**

9. The tenant/1<sup>st</sup> applicant filed a reference dated November 24, 2022 seeking restraining orders against the landlord as well as orders that the landlord re-open the premises.
10. The tenant/1<sup>st</sup> applicant also filed another application dated December 7, 2022 in opposition to a notice received from the landlord dated December 6, 2022.
11. The 1<sup>st</sup> applicant/tenant has since filed a notice to withdraw their case dated December 28, 2022 after entering into a mutual agreement with the landlord dated December 15, 2022.
12. The 2<sup>nd</sup> applicant thereafter filed a further affidavit dated February 20, 2023 in response to the landlord's replying affidavit.

### **D. The Landlord/respondent's Claim**

13. The landlord/respondent has filed a replying affidavit dated December 15, 2022 in opposition to the tenant's application.

### **E. List Of Issues For Determination**

14. The issues raised for determination are as follows;
  - a. Whether the tenancy relationship between the parties was terminated?

### **F. Analysis And Findings**

#### **Whether the tenancy relationship between the parties was terminated?**

15. The 2<sup>nd</sup> applicant and the landlord entered into a tenancy agreement dated October 10, 2021 for a term that is disputed. The landlord avers that the same was for a period of one year while the tenant avers that it was for a period of three years.
16. The above notwithstanding, it is evident that whether it was for one year or three years, it qualifies as a controlled tenancy under the provisions of section 2 of cap 301 which defines a controlled tenancy.
17. Based on the above, termination of the said tenancy should adhere to the provisions of section 4 of cap 301 which provides 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.”

- (4) 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....

18. In the present case both parties agree that due to frustrations, the tenant herein had issued a one month notice to the landlord via WhatsApp of their intention to vacate the premises. The same did not take effect and the tenant continued to occupy the premises.
19. Thereafter the landlord admits that they also issued a notice to the tenant dated December 6, 2022 requiring them to vacate within 30 days.
20. A clear perusal of both notices shows that they do not adhere to the above cited provisions of cap 301 on termination of a controlled tenancy. As a result, the tenancy relationship between the parties cannot be deemed to have been legally terminated.
21. Additionally, the notice by the landlord was issued during the subsistence of this suit. This from the onset warrants the notice as being invalid.
22. It is therefore my finding that the tenancy relationship still exists until it is properly terminated as per the provisions of section 4 of cap 301.

#### **G. Orders**

- a. The upshot is that the tenant’s reference and application dated November 24, 2022 are hereby upheld in the following terms;
- b. The landlord shall cease interfering with the possession of the 2<sup>nd</sup> applicant and is restrained from unlawfully locking the premises.
- c. The tenant shall keep paying rent as and when it falls due failure to which the landlord is at liberty to distress for rent.
- d. The landlord is at liberty to issues a fresh notice as per cap 301 if they so wish.
- e. Each party shall bear their own costs.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 26<sup>TH</sup> DAY OF APRIL 2023 IN THE ABSENCE OF PARTIES.**

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

