



**Kingori v Nyanda Sacco Society Ltd (Tribunal Case E001 of 2024)
[2024] KEBPRT 1190 (KLR) (2 August 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1190 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E001 OF 2024
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
AUGUST 2, 2024**

BETWEEN

FRANNCIS WAMBUGU KINGORI TENANT

AND

NYANDA SACCO SOCIETY LTD LANDLORD

JUDGMENT

1. The landlord herein served a tenancy notice dated 3rd October 2023 upon the tenant seeking to terminate his tenancy with effect from 3rd January 2024 on the grounds that it intends to occupy the premises comprised in the tenancy for purposes of carrying out the Sacco business.
2. Being opposed to the said notice, the tenant filed the instant Reference dated 2nd January 2024 pursuant to Section 6 (1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap. 301, Laws of Kenya together with a motion of even date in which he sought for stay of execution of the notice.
3. Interim orders were granted ex-parte in terms of the application on 5th January 2024 pending hearing inter-partes on 1st February 2024. The said application was responded to through the replying affidavit of Salome Wairimu Mugai sworn on 31st January 2024.
4. On 1st February 2024, the matter came up before the Tribunal in the presence of Counsel for the tenant and in absence of the landlord and the application dated 2nd January 2024 was allowed in terms of prayers 3 & 4 pending hearing and determination of the main Reference. Both parties were directed inter-alia to comply with Order 11 of the Civil procedure Rules within 30 days thereof and the matter was therefore slated for mention on 13th March 2024.
5. In compliance with the foregoing directions, the tenant filed a list of witnesses, witness statement and list of documents all dated 1st March 2024. The landlord equally filed a list of witnesses and a



list of documents dated 11th March 2024. On 13th March 2024, the matter was fixed for hearing of the Reference on 11th April 2024 when it could not be heard owing to factors beyond the Tribunal's control.

6. The matter eventually proceeded for hearing on 3rd June 2024 when both parties testified. The landlord's witness one Salome Wairimu Muhia adopted the contents of her replying affidavit sworn on 31st January 2024. She also relied on the documents attached to the list of documents filed by the landlord in this matter.
7. The suit property being L.R NO. NYAHURURU MUNICIPALITY BLOCK 6/282 was purchased by the landlord in May 2023 together with the commercial building standing thereon. The landlord became registered as proprietor thereof on 8th September 2023. The landlord has been operating its Sacco business at Cigma Centre in Nyahururu Town and was acquiring the suit property in order to relocate its business to the suit premises.
8. The intention of the landlord is to use the ground floor of the suit property in order to make it easily accessible to its clients. The lease agreement for its current tenancy was produced as landlord's exhibit 2. According to the landlord, the lease period given in the agreement has expired and its landlord at Cigma Centre had given notice of termination in that regard.
9. It is landlord's case that upon the tenant herein being given notice, he did not indicate whether he intended to object thereto within the requisite Thirty (30) days. It is therefore the contention of the landlord that the application and reference by the tenant herein is an abuse of court process. Two other tenants had vacated from two rooms in the suit premises but the tenant herein declined to do so.
10. In re-examination, the landlord's witness admitted that the tenant responded to the termination notice by requesting for reconsideration thereof. She also stated that the landlord's lease at Cigma Centre had already expired without being renewed.
11. The tenant also testified and relied on his filed witness statement and list of documents dated 1st March 2024. He stated that he entered into the suit premises on or about 15th February 2023 and signed a tenancy agreement with his former landlord one Edward Wambu for a period of three (3) years and one (1) month from the said date until 15th March 2025.
12. According to the tenant, he was challenging the tenancy notice on the basis that he would be left without a place of business if the landlord evicted him. In cross examination, the tenant stated that he had invested heavily in the business premises. He runs two pool tables and sells soft drinks in the suit premises.
13. We are therefore required to determine whether to approve or dismiss the tenancy notice. We are also required to determine who is liable to pay costs of the reference.
14. It is not in dispute that the landlord issued a tenancy notice in the prescribed form under the provisions of Section 4 (2) of Cap 301. The notice fully complies with all the provisions of Section 4 as it was for a period of a least two months.
15. Section 7(1)(g) of the said Act provides one of the grounds for termination of tenancy as follows;

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



16. The landlord has cited the said ground of termination in the impugned tenancy notice. The tenant has not disputed the said ground for termination of his tenancy. The landlord has justified the notice by stating that its tenancy in its current rented premises at Cigma Centre had expired. The landlord has produced the expired tenancy agreement and stated that other tenants who occupied two other rooms in the premises where it intends to relocate to had already surrendered vacant possession. This fact was not disputed by the tenant herein in his evidence.
17. The tenant stated that it entered into a three years' one-month tenancy with his former landlord which was yet to expire. He stated that he has invested heavily in the suit premises by installing two pool tables and soft drinks for sale. No other improvements were claimed to have been effected by the tenant therein. He admitted that the investments effected in the suit premises comprises of movable assets. There is therefore no difficulty in giving vacant possession.
18. It is to be noted that the tenancy is controlled and the law requires a landlord who wishes to terminate such a tenancy to give the tenant a two months' notice. Consequently, the tenant having entered into a controlled tenancy cannot insist that his tenancy cannot legally be terminated midstream.
19. Based on the foregoing findings, we are convinced that the landlord has been able to demonstrate that it has a settled intention to occupy the suit premises for a period of more than one year for its own business as intimated in the tenancy notice.
20. Section 9(1) of Cap. 301, Laws of Kenya provides as follows;
 - “(1) Upon a reference, a Tribunal may, after such inquiry as may be required by or under this Act, or as it deems necessary—
 - (a) approve the terms of the tenancy notice concerned, either in its entirety or subject to such amendment or alteration as the Tribunal thinks just having regard to all the circumstances of the case; or
 - (b) order that the tenancy notice shall be of no effect;
 - (c) and in either case make such further or other order as it thinks appropriate”
21. We have already found the reasons given by the landlord in the termination notice to be plausible and on the other hand, we have not found any reason given by the tenant to disapprove the said notice.
22. As regards costs, the same are in this Tribunal's discretion under Section 12 (1)(k) of Cap 301 but always follow the event unless for good reasons otherwise ordered. We have no reason to deny costs to the landlord being the successful party.
23. In conclusion, the following final orders commend to us;
 - a. The landlord's notice to terminate tenancy dated 3rd October 2023 is approved and the tenant's tenancy is hereby terminated.
 - b. The tenant shall vacate the suit premises situate on L.R NO. NYAHURURU MUNICIPALITY BLOCK 6/282 on or before 31st August 2024 and in default shall be evicted therefrom by a Licensed Auctioneer who shall be accorded security by the OCS NYAHURURU POLICE STATION (if need be).
 - c. The tenant shall pay costs of this case assessed at Kshs 30,000/= to the landlord.



It is so ordered.

JUDGEMENT DATED, SIGNED & VIRTUALLY DELIVERED THIS 2ND DAY OF AUGUST 2024.

HON. GAKUHI CHEGE

PANEL CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

HON JOYCE A OSODO

PANEL MEMBER

IN THE PRESENCE OF;

Gicheha for the tenant

Ndiritu for the landlord

