



**Terazzos Limited v Zafarani Development Organization & another (Tribunal  
Case E408 of 2024) [2024] KEBPRT 665 (KLR) (21 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 665 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E408 OF 2024  
A MUMA, MEMBER  
MAY 21, 2024**

**BETWEEN**

**TERAZZOS LIMITED ..... TENANT**

**AND**

**ZAFARANI DEVELOPMENT ORGANIZATION ..... 1<sup>ST</sup> RESPONDENT**

**IMAH SULEIMAN ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A. Parties And Representatives**

1. The Applicant, Terazzos Limited is an occupant in the suit property (hence the tenant).
2. The Applicant is acting in person through a Director James Murugu.
3. The Respondents, Imah Suleiman T/A Zafarani Development Organization is the owner of the suit property located at Ongata Rongai within Kajiado County (hence the Landlord).
4. The firm of Businei MC & Company represents the Respondents in the matter.

**B. Background Of The Dispute**

5. The Tenant moved this tribunal vide a Reference and Notice of Motion Application 28<sup>th</sup> March 2024 seeking for; the application to be certified urgent, the Respondents be ordered to allow the Applicant access to the premises, that the Landlord, its agents or servants be restrained from harassing the tenant in any way and that the OCS Ongata Rongai Police Station to assist in compliance of the orders.
6. The Tribunal issued orders dated 3<sup>rd</sup> April 2024 and directed that the applicant to file and serve the application and that the same be heard on 15<sup>th</sup> April 2024.



7. In response, the Landlord filed a Replying Affidavit dated 11<sup>th</sup> April 2024 and a statement of defence to Reference of even date. In the Replying Affidavit the Landlord stated that the parties had entered into a tenancy agreement for a period of one year beginning 1<sup>st</sup> April 2023 and set to expire on 1<sup>st</sup> April 2024.

### C. The Tenant's Claim

8. The tenant claims that the Landlord has threatened to evict it forcefully and issued it with a notice to vacate by 1<sup>st</sup> April 2024.
9. It is therefore the Tenant's case that the Landlord's Notice Terminate which was supposed to take effect by 1<sup>st</sup> April 2024 is invalid and the same should be invalidated by the tribunal.

### D. The Landlord's Claim

10. It is the Landlord's case that it wrote a letter dated 15<sup>th</sup> February 2024 out of courtesy and good faith since the tenancy agreement was due to expire and the Landlord did not have any intentions of renewing it.

### E. List Of Issues For Determination

11. I have carefully perused the material placed before this court by the parties and it is my considered opinion that the following issues fall for determination:
- a. Whether the Notice issued by the Landlord is valid?

### H. Analysis & Determination

12. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (hereinafter 'the Act') Chapter 301 Laws of Kenya Act at section 4(2) 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.

13. Section 4(4) further 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, as shall be specified therein

14. In the case of *Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited*, Civil Appeal No. 203 of 1994 it was 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 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."



15. Section 7 of the [Act](#) provides for the grounds within which Landlord is allowed to issue a termination notice and at subsection (f) it provides as follows;

Where under section 4 of this Act 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 as are stated in the aforesaid notice—

That on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises;

16. In this case the Landlord issued the tenant with letter dated 15<sup>th</sup> February 2024 which was a reminder out of good faith that the Tenancy was due to expire in accordance with the Tenancy Agreement.
17. The same cannot be considered as a notice because the parties had a tenancy agreement providing for a specific period within which the tenancy was meant to exist.
18. Therefore, the Notice issued by the Landlord is valid because it was a reminder of the pending expiry of the lease agreement and that the parties were/are bound by the lease agreement signed by them. The Notice need not have been guided by Sections 4 and 7 of the Act since it does not fall under the ambit of a Termination Notice as described under Section 2 of the [Act](#).
19. The Tenancy Agreement in the instant case provided for a duration of one year within which the tenancy would be valid. Clause 5.3 of the Tenancy Agreement states that;
- If the tenant has substantially complied with the terms of this Agreement the Landlord agrees to give the Tenant an option to extend the tenancy for further one (1) year subject to the rent being revised based on prevailing conditions, the notice must be given by the tenant in writing not later than one (1) month prior to the end of the Term if the Tenant wishes to keep up the option.
20. The Tenant did not issue any notice in accordance with the aforementioned clause of the Tenancy Agreement therefore the choice of the Landlord to issue the Notice as a reminder of the expiry of the tenancy agreement was valid.

## **I. Orders**

21. The upshot is that the Tenant's Reference and Application dated 28<sup>th</sup> March 2024 are hereby dismissed in the following terms:
- The Tenant to vacate from the premises on or before the 31<sup>st</sup> of May 2024.
  - The Ocs Ongata Rongai to assist in compliance.
  - Rent arrears due to go towards offsetting deposit held by the Landlord and damages for damages suffered when electricity was disconnected.
  - Each party shall bear their own costs.

**HON. A MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**



Ruling dated, delivered and signed at Nairobi on this 21<sup>st</sup> day of May 2024 in the presence of Ngetich for the Landlord and James Murugu Tenant representative in person

**HON. A MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

