



**Somo t/a Zazamani Shop v Abnoor (Tribunal Case E501 of 2023)  
[2023] KEBPRT 426 (KLR) (3 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 426 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E501 OF 2023  
A MUMA, VICE CHAIR  
JULY 3, 2023**

**BETWEEN**

**YUSUF IBRAHIM SOMO T/A ZAZAMANI SHOP ..... APPLICANT**

**AND**

**ESHE SHARIFF ABNOOR ..... RESPONDENT**

**RULING**

**A. Parties and Representatives**

1. The Applicant Yusuf Ibrahim Somo is the tenant and rented out space from the Respondent on the suit property located at IR No 36/1/777. (hereinafter known as the ‘tenant’)
2. The Firm of Sky Advocates represent the tenant/applicant in this matter.
3. The Respondent Eshe Shariff Abnoor is the Landlord and the proprietor of the Suit Property located at IR No 36/1/777. (hereinafter known as the ‘Landlord’)
4. The firm of Kibet & Partners Advocates represent the Landlord/Respondent in this matter.

**B. The Dispute Background**

5. The landlord served the tenant with a notice to terminate tenancy dated March 30, 2023 requiring that the tenant vacate the premises by June 1, 2023 on the grounds that the landlord intends to handover the premises to developers and share the profits among the beneficiaries as listed in the confirmation of grant dated May 25, 2023.
6. The Tenant in opposition of the notice by the landlord, filed a Reference and a Notice of Motion application dated May 22, 2023 under section 6 of the [Landlords and Tenants \(Shops, Hotels and Catering\) Establishments Act](#) Cap 301. The tenant was seeking orders restraining the landlord from



evicting them and interfering with their quiet occupation of the premises pending the hearing and determination of both the Reference and the Application.

7. The landlord has in response to the tenant's reference and application filed also filed an application dated June 16, 2023 seeking orders to be granted an order allowing them to evict the tenant and take back possession of the premises. And that the Tribunal set aside the orders issued on May 25, 2023 which restrained the landlord from evicting the tenant.

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

8. The Tenant has filed a Reference and a Notice of Motion Application dated 6<sup>22nd</sup> May 2023 seeking that the Landlord be restrained from evicting them from the premises and requesting the Tribunal to extend the tenancy period by one year.

### **D. Landlord's Claim**

9. The Landlord has filed a Replying Affidavit dated June 16, 2023 wherein the landlord seeks to be allowed to evict the tenant on the strength of their notice to terminate tenancy.
10. The landlord has also filed an application dated June 16, 2023 seeking to be granted orders to evict the tenant and that the Tribunal set aside the Orders issued on May 25, 2023 which restrained the landlord from evicting the tenant.

### **E. List of Issues for Determination**

11. The issues raised for determination are as follows;
  - a. Whether the Notice issued by the Landlord to terminate tenancy and the reasons advanced are valid?

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

#### **Whether the notice issued by the landlord to terminate tenancy is valid?**

12. The tenant approached this tribunal by way of the reference dated May 22, 2023 in opposition to the landlord's notice to terminate tenancy dated March 30, 2023.
13. The landlord has indicated that the grounds upon which they seek to terminate the tenancy are that they intend to handover the premises to a developer and thereafter distribute the profits from the same among the beneficiaries as listed in the Confirmation of Grant dated May 25, 2023.
14. Section 4 of cap 301 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....
15. The above provision requires that any Notice must accord the tenant a period of not less than two months within which to vacate and must provide reasons for the termination.
16. The notice issued by the landlord satisfied these requirements. The Notice was issued on March 30, 2023 and was to take effect on June 1, 2023. The Notice also provided reasons for termination being that the landlord intended to handover the premises to a developer and distribute the proceeds from the same among the beneficiaries as listed in the Confirmation of Grant dated May 25, 2023.
17. Section 4(5) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments)* also provides that;
- "A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and requires the receiving party to notify the requesting party in writing, within one month after the date of receipt of the notice, whether or not he agrees to comply with the notice."
18. In the present case, having perused the file, I take note of the fact that the reference by the tenant opposing the Notice was filed on May 22, 2023. This is after the notice was issued in March 2023. By virtue of this, the tenant did not comply with the requirements of the above cited provision.
19. They did not respond to the notice within a month and additionally, they did not file an application seeking for extension of time or that they be allowed to file the reference out of time.
20. In addition to the foregoing, based on the Confirmation of Grant presented by the Landlord dated May 25, 2023, the Landlord is the rightful owner of the premises in unison with the other beneficiaries listed in the Confirmation of Grant dated May 25, 2023. As such denying them possession of the premises would be very unjust and in oppression of their right to the property.
21. In light of the foregoing, I therefore proceed to order as follows;

### **G. Orders**

- a. The upshot is that the Tenant's Reference and Application dated May 22, 2023 are hereby dismissed in the following terms;
- b. The Landlord's Application dated June 16, 2023 is hereby allowed in the following terms;
- c. The tenant shall hand over vacant possession of the premises to the landlord on or before July 15, 2023 failure to which the landlord shall be at liberty to break in and take possession.
- d. OCS Pangani Police Station to assist in Compliance.
- e. Each party shall bear their own costs.

**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 3<sup>RD</sup> DAY OF JULY 2023 IN THE ABSENCE OF PARTIES**



**HON A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

