



**Getoto v Mwangi (Tribunal Case E206 of 2023)  
[2024] KEBPRT 1002 (KLR) (9 July 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1002 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E206 OF 2023  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
JULY 9, 2024**

**BETWEEN**

**GILBERT ORINA GETOTO ..... APPLICANT**

**AND**

**GEOFFREY MUTHUA MWANGI ..... RESPONDENT**

**JUDGMENT**

1. This suit was triggered by the purported notice of termination dated 20<sup>th</sup> November 2023 which was by a letter of even date by the Landlord's advocates M/S Naomi Mureithi & Co. Advocates. The said notice was to the following effect:-

“Take Notice that your tenancy at the aforementioned premises stands terminated as of today the 20<sup>th</sup> November 2023. Our client and his agents will be commencing the process of recovering possession of their shop premises. Take further notice that you are to vacate the said premises on or before 30<sup>th</sup> November 2023 and no refund will be payable to yourself since you have never remitted the same.
2. In his reference dated 24<sup>th</sup> November 2023, the Tenant grieved that:-

“The landlord has unlawfully issued illegal notice threatening to evict me on or before 30<sup>th</sup> November 2023 contrary to provisions of Cap. 301 Laws of Kenya. I pray the court to intervene and I be given the necessary orders”.
3. The reference was accompanied by a notice of motion application dated 24<sup>th</sup> November 2023. The same sought that the landlord be restrained from interfering with his quiet possession of the demised premises. The OCS Molo Police Station was to oversee compliance with any court orders issued. The Tenant also sought for the costs of the suit and the application.



4. In answer to the reference and the application, the landlord filed the Replying Affidavit sworn on the 7<sup>th</sup> December 2023. The Tenant was to thereafter file a further affidavit sworn on the 4<sup>th</sup> January 2024.
5. The matter was fixed for hearing on the 12<sup>th</sup> June 2024. The landlord and counsel availed themselves for the hearing but the Tenant was absent with no explanation offered. The court allowed the landlord to tender his evidence and he testified as LW1 and closed his case. His counsel opted to have the court make judgement in the matter without offering submissions.
6. Having perused the parties evidence on record and the landlords testimony in court, it is our view that the issues for determination in this matter as the following:-
  - A. Whether the notice of termination dated 20<sup>th</sup> November 2023 is lawful.
  - B. Whether the Tenant is in rent arrears and how much if at all?.
  - C. Who should bear the costs of this Application and suit.
7. From the pleadings and evidence on record, it is clear that the issues herein revolve around the legitimacy of the notice of termination dated 20<sup>th</sup> November 2023 and whether the Tenant has any rents in arrears. In our view, determination of the twin issues will have conclusively settled this matter. we shall therefore determine the reference and application together in this judgement.

**Issue No. A – Whether the notice of Termination of Tenancy dated 30<sup>th</sup> November 2023 is lawful.**

8. A casual look at the letter dated 20<sup>th</sup> November 2023, the same cannot be a notice as envisaged by Section 4 and 7 of the Act and Regulation 4 (1) of the Regulations to the act. The said letter was not in the prescribed form as required by Section 4(2) of the Act, did not give two months notice as expected by Section 4(4) of the Act and did also not offer any grounds for such termination as dictated by Section 7 of the Act.
9. The said notice was therefore a nullity in law ab-initio without any legal effect nor consequence. In this, we peg reliance on the celebrated case of Fredrick Mutua Mulinge T/A Kitui Uniform – vs- Kitui Teachers Housing Co-operative Society Ltd (2017) eKLR where the Environment and Land Court sitting at Nairobi held that:-
 

“It is clear from the foregoing authorities that the tenancy notice dated 28<sup>th</sup> June 2014 was null and void for failing to give the appellant two months notice as required under the Act and as such was of no legal effect. Life could not be breathed into the defective notice by the letter dated 1<sup>st</sup> July 2014 through which the Respondent purported to amend the effective date of the notice. The letter was not a notice in the prescribed form provided for under the Act”.
10. The court of Appeal in the case of Manaver N. Alibhai T/A Diani Boutique v South Coast Fitness and Sports Central Ltd [1995] eKLR had an opportunity to consider the issue of the legitimacy of a Termination notice and held that:-
 

“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. The 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 the 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. We therefore reiterate that the notice dated 20<sup>th</sup> November 2023 was unlawful as it was in clear breach of the [Act](#).

**Issue No. B. Whether the Tenant is in Rent arrears and how much if at all.**

12. The Landlord in his purported termination notice did not in anyway whatsoever allude to the Tenant being in any rent arrears. He also did not claim any rent arrears in his Replying Affidavit sworn on the 7<sup>th</sup> December 2023.
13. It can also be inferred from the parties unmarked phone messages attached to the Tenant’s further Affidavit dated 4<sup>th</sup> January 2024. There is no mention of any rents in arrears. The issue of rent arrears only emerged like the proverbial house in the mist during the landlord’s testimony in court without any support.
14. Section 107 of the [Evidence Act](#) provides that:-

“Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exists”.

We doubt that the landlord was able on a balance of probability to prove that the Tenant owed him any arrears in rent either at the time that he issued the illegitimate notice nor when he testified in court. We therefore dismiss the claim for rent arrears by the landlord.

**Issue No. C- Who should bear the costs of the suit and the application.**

15. The proviso to Section 27 of the [Civil Procedure Act](#) provides that:-

“Provided that the costs of any auction cause or other matter or issue shall follow the event unless the court or Judge shall for good reason otherwise order”.

We do not find any justifiable cause to depart from this wisdom and proceed to award the costs to the Tenant.

16. In the final analysis, we make the following orders:-
- i. That the notice of termination dated 20<sup>th</sup> November 2023 is declared illegal and of no legal effect nor consequences.
  - ii. That the Tenant shall be allowed quiet possession of the demised premises.
  - iii. That the landlord shall pay costs to the Tenant assessed at Kshs.10,000/-.
- Those are the orders of the court.

**JUDGEMENT DATED, SIGNED AND VIRTUALLY DELIVERED AT NAIROBI THIS 9TH DAY OF JULY 2024.**

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI**

**PANEL CHAIRPERSON MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL BPRT**



**Judgement delivered in the presence of the Tenant/Applicant and in the absence of Landlord and his Counsel though duly notified of the same.**

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI**

**PANEL CHAIRPERSON MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL BPRT**

