



**Posh It Limited v Ngila (Tribunal Case E750 of 2024)  
[2024] KEBPRT 1362 (KLR) (9 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1362 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E750 OF 2024  
P MAY, MEMBER  
SEPTEMBER 9, 2024**

**BETWEEN**

**POSH IT LIMITED ..... APPLICANT**

**AND**

**JANE CATHERINE NGILA ..... RESPONDENT**

**RULING**

1. The tenant approached the Tribunal by filing the reference dated 11<sup>th</sup> July, 2024 seeking the intervention of the Tribunal stating that the landlord has been interfering with the tenant's quiet possession. Contemporaneous with the reference, the tenant filed an application under certificate seeking orders to restrain the landlord from interfering with the tenant's quiet possession and the landlord to issue them with ETR receipts in proof of payment of taxes.
2. The application is premised on the grounds set out on the face of the application and the grounds set out in the supporting affidavit. The tenant stated they leased the demised premises vide the lease agreement dated 28<sup>th</sup> February, 2024. The terms of the lease were agreed upon by the parties and explicit.
3. The tenant stated that they at all times they performed their obligation as required under the lease agreement. The tenant stated that they were issued with a notice of termination of tenancy dated 30<sup>th</sup> June, 2024. The tenant challenged the validity of the said notice which sought to have them vacate the demised premises. The tenant maintained that the said notice contravened the mandatory provisions of *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*.
4. The landlord opposed the application through the replying affidavit sworn on 29<sup>th</sup> July, 2024. The landlord from the onset stated that the present proceedings were brought in bad faith to frustrate her from evicting him. She blamed them for misleading the Tribunal and was not deserving the orders sought. She stated that the tenant had failed to remit rent as when it fell due in blatant disregard to the



terms of the lease agreement. This compelled the landlord to issue the notice of termination as per the terms of the lease agreement. According to her then, the notice met all the legal requirements hence was valid.

5. The landlord averred that she instructed an auctioneer to levy distress against the tenant after the lapse of the notice period. She further stated that the tenant had undertaken unlawful partitioning and alteration of the demised premises contrary to Clause 3 (e) of the lease. It is her averment that when she confronted the tenant over the same, the tenant ignored her.
6. The landlord in their comprehensive affidavit challenged the jurisdiction of the Tribunal to grant the prayer 4 of the application.
7. The parties were directed to canvass the application by way of written submissions. The Tribunal has considered the application, the affidavits on record and the submissions filed and would proceed as follows:
8. The primary issue for determination is whether the prayer to restrain the landlord for evicting. The order sought is simply an order of temporary injunction against the landlord.
9. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of *Giella Versus Cassman Brown* (1973) EA 358. The conditions for the grant of an interlocutory are now, I think well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury in which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of probability.
10. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of; *Nguruman Limited versus Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

“in an interlocutory injunction application the Applicant has to satisfy the triple requirements; establishes his case only at a prima facie level; demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favor.”

11. Guided by the Court of Appeals holding, I wish to interrogate as to whether the Applicant has established a Prima Facie Case. The case of; *Mrao v First American Bank of Kenya Limited & 2 Others* [2003] eKLR defines a prima facie case as one which on the material presented in court, a tribunal property directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the respondent.
12. In a Tenancy Agreement, the Tenant is bestowed upon the duty to pay the rent as per the agreed terms. I have considered the submissions before this tribunal and it is clear that the tenant was in arrears before the filing of the application.
13. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) 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.



14. 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.

15. 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.”

16. In this case the Landlord issued the Tenant with a notice to terminate tenancy dated 30<sup>th</sup> June, 2024 which was to take effect from 14<sup>th</sup> July, 2024. Based on the above provision, the said notice was to take effect within two weeks which contravened the provisions of Cap 301. As such the said notice is invalid. The terms of the lease cannot supersede the mandatory requirements of the Act.

17. Having established that the notice issued by the Landlord to the Tenant was invalid, the Tribunal hands are tied. The parties must however understand that they have to abide by the terms of the lease agreement. The tenant has a duty to pay rent as when it falls due and also comply with other terms of the lease agreement. On the other hand, the landlord has to issue receipts as per the law.

18. In the end, it is clear this ruling determines the reference. For the avoidance of doubt, the application dated 11<sup>th</sup> July, 2024 is allowed in terms of prayers c and e. Each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED BY THIS HONOURABLE TRIBUNAL THIS 9<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**HON. PATRICIA MAY - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**DELIVERED IN THE ABSENCE OF PARTIES**

