



**Ideal Locations Limited v Mutavvej (Tribunal Case E152 of 2023)  
[2024] KEBPRT 1114 (KLR) (17 July 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1114 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E152 OF 2023  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
JULY 17, 2024**

**BETWEEN**

**IDEAL LOCATIONS LIMITED ..... APPLICANT**

**AND**

**SAMIER MOHAMEDRAZA MUTAVVEJ ..... RESPONDENT**

**JUDGMENT**

1. The Tenant originated these proceedings by the reference dated 3<sup>rd</sup> August 2023. The Tenant requested that:-

“The Tribunal to investigate the matter and determine the issues involved”.

The reference was anchored on Section 6 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments Act](#) (Cap. 301) herein after the Act.

2. The reference was provoked by the Notice of termination of Tenancy dated 15<sup>th</sup> June 2023 and which was founded on Section 4(2) of the Act. The grounds cited by the landlord for termination of the Tenancy are that:-
- That you are highly and persistently irregular in Rent payment whenever it becomes due and payable.
  - That you have defaulted in paying rent for a period of more than two (2) months after such rent has become due and payable and in particular you are in Rent arrears of Kshs 457,206.90 being rent for the months of April, 2023, May, 2023 and June, 2023 at Kshs 152,402.30 per month.
  - That you have committed substantial breaches of your obligations by defaulting in paying for water charges for the months of April, 2023, May, 2023 and June, 2023 amounting to Kshs



4,872/- and electricity charges for the months of April, May and June, 2023 amounting to Kshs 66,752.70.

3. Further to the reference, the Tenant filed list of documents dated 6/5/2024, list of witnesses and witness statement for the Tenant by one Stephen Ouko dated 7/5/2024. On his part, the defendant in response to the reference filed the witness statement dated 16/2/2024 by Talasam Mohamed, list of documents and further list of documents dated 16/2/2024 and 21/2/2024 respectively.
4. When the matter was fixed for hearing on 16/5/2024, the Tenant testified through its accountant Mr. Stephen Otieno Ouko and closed its case. The landlord testified through Mr. Talasam Mohamed who is the landlord's property manager and also closed their case. In brief the Tenant's case was that:-
  - i. It had never been in rent arrears and that it was meeting all its cardinal obligations.
  - ii. There was no understanding in writing on the tenancy between the parties and that there has never been any agreement to pay rent in advance and only paid the same on the strength of an invoice.
  - iii. The Landlord had arbitrarily and against the law increased rent from Kshs 152,402.30 to Kshs 232,568.40 but that it had still paid the same.
5. The evidence of the landlord on the other hand was that:-
  - i. The Tenant was a serial rent defaulter and was also in substantial breach of the tenancy agreement.
  - ii. At the time the Termination notice was issued, the Tenant was in rent arrears for the months of April, May and June 2023.
  - iii. Initially the Tenant was in rent arrears at Kshs 683,838.60/- by the 3/3/2023 which was only cleared in two batches of Kshs 341,373.90 and Kshs 342,464.70 paid on the 3/3/2024 and 13/4/2024 respectively.
  - iv. The wrongly charged rent at Kshs 232,568.40 was corrected by a credit note No.686.
  - v. The Tenant only paid the rent arrears of three (3) months on receiving the termination notice dated 15/6/2023. The payment was on the 21/6/2023 and included the payment for utility charges which was also in arrears for 3 months.
  - vi. The landlord had been able to establish that the Tenant was not consistent in rent payment and the termination notice deserved to be upheld.
6. Having analysed the pleadings, the evidence by the parties and also on taking due regard to the parties respective submissions, we are of the view that the issues for determination herein are the following:-
  - A. Whether the Landlord's notice of termination dated 15/6/2023 is lawful.
  - B. Who should bear the costs of this suit.

**Issue No. A- Whether the landlord's notice of termination of Tenancy dated 15/6/2023 is lawful.**

7. From perusal of the said notice, it is clear that the same is compliant with section 4(2) of Act and Regulation 4(1) of the Regulations to the Act for the reason that the same is in the prescribed form.  
The notice is also compliant with Section 4(4) of the Act in that the notice was for a period of not less than two (2) months.



8. The notice was also compliant with Section 7 of the Act in that it clearly stated the grounds on which it was founded. It is upon this court to now analyse the said grounds and find out whether they satisfy the requirements of the law.
9. It is plain that by the 3/3/2023 the Tenant was in rent arrears at Kshs 683,838.60. this is clearly demonstrated by the landlord's exhibit No. 2 and was also admitted by the Tenant's witness Mr. Stephen Otieno Ouko. The Tenant in appreciation of the arrears paid the amount in two installments of Kshs 341,373.90 and 342,464.70 paid on the 3/3/2023 and 13/4/2023 respectively.
10. It is also not in dispute and can also be inferred from the evidence on record that the rent for April, May and June, 2023 was only paid on the 21/6/2023 at Kshs 457,207 and a further Kshs 71,625 for utility bills. That was payment of rent at 3 months in arrears when looked against the law. Where the relationship between the parties has not been reduced into writing one of the terms and conditions to be applied on tenancies is clause Viii of the schedule to the Act thereof which provides:-

“The lessee shall pay rent for the premises in advance”.

11. It is therefore plain that the rent for April, May and June 2023 was not paid in advance as dictated by the law but in arrears in obvious breach of the law. This brings us to the provisions of 7(1) (b) of the Act which provides as a ground for termination as follows:-

“That the Tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable”.

12. In our view the landlord has satisfied all the requirements of Sections 4(2), 4(4), 7(1) (b) of the Act and Regulation 4(1) of the Regulations to the Act. We reiterate that it has been proved that the Tenant has persistently delayed in rent payment. This is clearly demonstrated by the arrears of Kshs 683,838.60. This was rent in arrears for approximately four (4) months.
13. The Tenant also paid the rents for April, May and June 2023 on the 21/6/2023. This was payment in arrears for three (3) months. We therefore determine that the landlord is entitled to vacant possession of the demised premises. In this we also take regard of the following decided cases.
14. In the case of Abdulnasir Said Abeid v Abdulrahim Ali Salim (2024) eKLR the court held that:-

“The undeniable fact was that at the time the landlord/Applicant served the Tenant the notice to terminate the Tenancy. The Tenant had not paid rent for the period exceeding two months. I find that the Honourable Tribunal erred in law and fact in failing to apply the provisions, of Section 7(1) (b) of ... Cap. 301”.
15. This was reiterated by the court in the case of Yusuf Abdulsamad v Haither Haji Abdi (2021) eKLR where it was held that:-

“The Tenant has admitted before the Tribunal that he paid rent for June and July 2018 on 2/8/2018. The Tenant was in arrears for 2 months as at 31/7/2018 when (sic) in breach of Clause 7(1) (b) of Cap. 301. That it is true that there is overwhelming evidence that the Tenant had been sometimes paying rent in advance at the request of the landlord. There is also no evidence that the landlord had been complaining about the Tenant's mode of



payment of rent. However, this cannot take away or compromise the landlord's right under Section 4(2) of Cap. 301 and Section 7 (1) (b) of Cap.....301".

16. In line with the above, the court in *Nanyuki Equator Savings and Credit Co-operative Society Ltd v Jane Nyawira Kiama* (2017) eKLR the court upheld a determination by the Tribunal to terminate a Tenancy similar circumstances. It held that:

"...I begin by pointing out that the appellant's own witness admitted that the appellant always paid rent in arrears when it ought to be paid in advance. On account of that admission and the evidence flanked out by the court which shows that the appellant was always in breach of his rent paying obligation, I find and hold that the Tribunal did not err by finding that the appellant was persistently in breach of his contractual obligation to pay rent in advance as opposed to in arrears. That finding was well supported by the evidence adduced before the trial court at the admission of the appellant's own witness".

17. Finally, we have drawn the wisdom of the case of *Samuel Kipkorir Ngeno & another v Local authorities Pension Trust (Registered Trustees) and another* (2013) eKLR where the High Court held that:-

"The temporary injunction sought in the present application is an equitable remedy at the court's discretion. He who comes to equity must come with clean hands. A Tenant who is in huge arrears of rent is underserving of the court's discretion. The court cannot be the refuge of a tenant who fails to meet his principal obligation of paying rent as and when it becomes due".

18. We would therefore uphold the notice of termination dated 15/6/2023 by the Landlord and with it falls the Tenant's reference dated 15/2/2024.

#### **Issue No. B- Who should bear the costs of the suit.**

19. The conventional wisdom of Section 27 of the *Civil Procedure Act* dictates that costs should follow the event. In this matter, the Landlord has succeeded and we have no reason to deny him costs which we award him.

20. In the final analysis, the orders that commend themselves to us are the following:-

- i. That the Tenant's reference dated 3/8/2023 is dismissed.
- ii. That the landlord's notice of termination of Tenancy dated 15/6/2023 is lawful and is upheld as having taken effect on the 1<sup>st</sup> day of September 2023.
- iii. That the Tenant will settle all the rents in arrears, mesne profits and utility bills of upto and including the 15/8/2024 or earlier and vacate the demised premises.
- iv. That if the Tenant does not vacate voluntarily as in 3 above, the landlord shall be at liberty to effect eviction at the Tenant's costs.
- v. That the landlord is awarded costs at Kshs 20,000/-.

Those are the orders of the court.

**JUDGEMENT SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> 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 Mr. Kings for the Tenant and Mr. Hassan for the Landlord- M/S Ali holding brief for him .

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

**PANEL CHAIRPERSON MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL BPRT**

