



**Ess Pee Ess Investement Ltd v Karanja (Tribunal Case E304 of 2023)  
[2024] KEBPRT 466 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 466 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E304 OF 2023  
N WAHOME, MEMBER  
APRIL 18, 2024**

**BETWEEN**

**ESS PEE ESS INVESTEMENT LTD ..... LANDLORD**

**AND**

**JEFF NDUNGU KARANJA ..... TENANT**

**RULING**

1. This matter turns on two (2) issues only. These are first, whether the suit before the court is competent and secondly, whether the notice of termination of the tenancy is lawful. I conceive this particular view from the materials on record before me including the submissions by both parties.
2. The submissions by the Tenant/Applicant are dated the 17/1/2024 and those of the Respondent are dated 25/1/2024. What however is missing from the applicant is a reference that is supposed to have originated this suit. I have checked in both the court portal and on the physical file and no such reference is traceable.
3. Efforts have also been employed to contact our Mombasa registry but there is no evidence of such a reference in the skeleton file at the registry. That renders the Applicant's application dated 30/11/2023 incompetent and of no consequences.
4. A reference was mandatory in these circumstances to originate any proceedings and the absence of the same rendered all subsequent dispositions a nullity in law. In the case of *Gitonga Muruki & Co. Advocates – vs- Mhasibu Sacco society Ltd* (Misc. Civil Application E730/22) the court held that:-

“Based on the above Rules and authorities, I am satisfied that the Applicant ought to have anchored his notice of motion in a suit. Without a substantive suit, the notice of motion is not properly before this court, and the same simply cannot stand alone”.



5. I am further guided by the decision of the High Court in *Proto Energy Limited – vs- Hashi Energy Ltd* (2019) eKLR at paragraph 14, where the court stated as follows:-

“Order 3 Rule (i) (ii) provides that every suit shall be instituted by way of a plaint. As a general Rule, a suit can only be instituted by way of a plaint, petition or an originating summons. A notice of motion is not legally recognized as an originating process. A notice of motion can only be filed within a properly instituted suit. The Applicants failed to file any originating process in this matter. I find that the attempt to institute this suit by way of a Notice of Motion renders the entire suit defective”.

6. In this regard, I find that failure by the applicant to file a reference in originating this proceedings rendered a fatal blow to the same and they have to terminate at the point of such recognition.

I would therefore dismiss all the proceedings herein for being incompetent.

7. For the comfort of the parties, and in the event that I can be wrong on the first issue, I wish to consider the Notice of termination issued herein and dated 26<sup>th</sup> October 2023. The same is in the form of a letter addressed to the Tenant. Section 4(2) of the Landlord and Tenant (Shops, Hotels and Catering Establishments Act ) Cap 301 of the Laws of Kenya, hereinafter the Act 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 Landlord in the prescribed form”.

8. The prescribed form alluded to above is provided for by Regulation 4 (1) of the Regulations to the Act which provides that:-

“A notice under Section 4(2) of the Act by a Landlord shall be in form A. In the schedule to these Regulations”.

9. A look at the same purported letter of termination dated 26<sup>th</sup> October 2023 show that the same is clearly in conflict with Section 4(2) of the Act and Regulation 4(1) of the Regulations to the Act. Those are provisions that call for strict compliance with and cannot be compromised.

10. In this, I am guided by the case of *Lall vs. Jeypee Investment Ltd*, Nairobi HCCCA No. 120 of 1971 (1972) EA 512 where the court held that:-

“The Landlord and Tenant (shops, Hotels and Catering Establishment) Act is an especially enacted piece of legislation which creates a privileged class of tenants for the purpose of affording them the protection specified by its provisions against ravages of predatory landlords. Such protection can only be fully enjoyed if the provisions of the Act are observed to the letter otherwise the clearly indicated intention of the legislature would be defeated. In order to be effective in this fashion, the Act must be construed strictly no matter how harsh the result.... The Landlord and Tenant Act laid down a code which Parliament intended to be followed and if a landlord does not give notice of termination as prescribed, the notice will be ineffectual. This may seem a technical and unmeritorious defence, but there is no doubt that the court has no power to dispense with this time limits if the defendant chooses to object at the proper time. This is an Act which requires, in so far as giving of the notice is concerned, absolute and complete not merely substantive compliance with its preemptory provisions”.



11. It then follows that the letter dated 26/10/2023 is not a notice as envisaged by the law or the regulations and therefore unlawful and of no legal effect. Only to add that the 30 days notice was lawful in view of the lease agreement between the parties dated 1/7/2023 at clause 1 thereof when read together with Section 4(4) (iii) of the Act.
12. Finally and looking at the materials on record as looked against the Tenant's application dated 29/12/2023, I would have been very reluctant to issue equitable orders in favour of the Applicant. Assuming that the applicant was properly before this court, I would have dismissed the Application as lacking merit in any way. The Applicant is a person who is demonstrated as a serial rent defaulter and therefore failing in his cardinal obligations as a tenant, which is timely payment of rent as it accrues and falls due.
13. On the question of costs, I have found that the purported notice of termination of tenancy was defective. Further I have found that the proceedings herein as initiated by the Applicant to be incompetent. I would therefore order that each party do bear own costs.
14. In the final analysis, the orders that commend to me are the following:-
  - i. That the suit/application herein is incompetent and is dismissed.
  - ii. That the notice of termination of tenancy dated 26/10/2023 is unlawful and of no legal effect.
  - iii. Pursuant to the powers of this court donated by Section 9(3) (b) of the Act, I would allow the landlord to issue a proper notice in compliance with the law at its convenience.
  - iv. Each party shall bear own costs. Those are the orders of the court.

**RULING SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18<sup>TH</sup> DAY OF APRIL, 2024.**

**HON. NDEGWA WAHOME**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Ruling delivered in the presence of Mr. Chege holding brief for Mr. Mathenge for the Landlord.

No appearance for the Tenant/Applicant.

**HON. NDEGWA WAHOME**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**18<sup>TH</sup> APRIL 2024**

Court: Copy of the Ruling to be supplied on payment of the requisite court fees.

**HON. NDEGWA WAHOME**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

