



**Kamau v Malwenge & another (Tribunal Case E046 of 2024)
[2024] KEBPRT 1154 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1154 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E046 OF 2024
P KITUR, MEMBER
MAY 17, 2024**

BETWEEN

ELIZABETH KAMAU TENANT

AND

JOSEPHINE MALWENGHE 1ST LANDLORD

GREGORY MWILU 2ND LANDLORD

RULING

A. Parties And Their Representatives

1. The 1st and 2nd Respondents/Landlords (hereinafter referred to as “the Landlords”) are the owners of a stall in Gikomba Market within Nairobi County (hereinafter referred to as “the premises”) and have let it out part to the Tenant.
2. The Landlord is represented by the firm of Mnm Advocates LLP.
3. The Applicant is a Tenant of the Landlord and occupies the premises.
4. The Tenant appears in person in this matter.

B. Dispute Background

5. The Tenant claims that he has been served with a verbal eviction notice by the Landlord. According to the Tenant, the said notice is defective and illegal.
6. On the other hand, the Landlord admits having issued the same based upon mutual understanding with their Landlord – Tenant relationship being verbal.



C. Issues For Determination

7. I have considered the Tenant's application and the reply thereto and it is my considered view that the main issue that is before this Honorable Tribunal is:
- i. Whether a verbal Notice of Termination of Tenancy can be sustained

D. Analysis And Determination

8. From the evidence by the parties, it is clear that the present relationship as between them falls within the definition of a controlled tenancy under Section 2 of the *Landlord and Tenants (Hotels, Shops and Catering Establishments) Act* Cap 301 ("the Act") which provides:

"controlled tenancy" means a tenancy of a shop, hotel or catering establishment—

- a. which has not been reduced into writing; or
- (b) which has been reduced into writing and which—
- (i) is for a period not exceeding five years; or
- (ii) contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
- (iii) relates to premises of a class specified under subsection (2) of this section:

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;

9. The *Act* requires a Landlord who wishes to terminate or alter the terms of a controlled tenancy to issue a notice in the prescribed form. Section 4(2) of the *Act* provides as follows;
4. Termination of, and alteration of terms and conditions in, controlled tenancy
- (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.
10. In *Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited*, Civil Appeal No. 203 of 1994 the Court of Appeal held 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.



11. Additionally, in *Nandlal Jivraj Shah & 2 others (all trading as Jivaco Agencies v Kingfisher Properties Limited)* [2015] eKLR the Court of Appeal pronounced itself as follows;

“The procedure of terminating a controlled tenancy is contained in the Act. Under Section 4(1) thereof, termination of controlled tenancies can only be undertaken under the purview of the Act 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....” (Emphasis added)
12. In the present matter before this Honourable Tribunal, it is clear that the Landlords did not issue any Notice to Terminate Tenancy as provided under the schedule to the *Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations*, 1966.
13. The provisions of the Act with respect to issuing a notice are couched in mandatory terms. Without the said Notice to Terminate no termination or alteration can occur.

E. Orders

14. The upshot is the Tenant’s Application dated 15th January 2024 succeed in the following terms:
- a. The Landlords are hereby restrained from evicting the Tenant or in any manner howsoever unlawfully interfering with the Tenant’s quiet occupation, possession and lawful enjoyment of the suit premises at Gikomba within Nairobi County.
 - b. The Tenant shall continue paying rent as and when it falls due.
 - c. The Landlord is at liberty to issue any notice in the prescribed form no earlier than 30th June 2024.
 - d. The Tenant is awarded costs assessed at Kshs. 10,000/= recoverable from monthly rent.
 - e. The OCS Shauri Moyo Police Station to assist in compliance with these Orders and ensure that peace prevails.
 - f. The Complaint dated 15th January 2024 is marked as settled in the above terms.

HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR ON 17TH MAY 2024 IN THE PRESENCE OF THE TENANT AND OOKO FOR THE LANDLORDS.

HON P. KITUR



MEMBER

BUSINESS PREMISES RENT TRIBUNAL

