



**Kubasu v Gituma (Tribunal Case E464 of 2023)
[2023] KEBPRT 1127 (KLR) (15 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1127 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E464 OF 2023
P MAY, MEMBER
NOVEMBER 15, 2023**

BETWEEN

HARUN KUBASU TENANT

AND

ROSEMARY K GITUMA LANDLORD

RULING

1. The application before me is the tenant's notice of motion dated 10th May, 2023. The application sought a plethora of orders but principally orders to extend the time within which to file a reference and orders of temporary injunction. The application is premised on the grounds set out in the supporting affidavit sworn by the tenant on an even date.
2. The landlady took a multi-pronged approach in opposing the application. First, she filed a replying affidavit challenging the contents of the supporting affidavit. She also filed a notice of preliminary objection stating that the Tribunal's jurisdiction had been divested by the lapse of the lawful notice to terminate tenancy that she had issued to the tenant.
3. The parties elected to canvass the application and the attendant notice of preliminary objection by way of written submissions. There has been compliance by both parties and would proceed as follows:
4. The crux of the present dispute is whether the tenant deserves to be granted leave to file their reference out of time. It would be prudent to state the chronology of events in this dispute.
5. It is not in contention that the landlady served the tenant with a notice to terminate tenancy dated 20th February, 2023. The said notice was to take effect on 1st May, 2023. The parties are in agreement that the said notice was in the form stipulated under Section 4 of [CAP 301](#). The tenant has challenged the grounds set out in the said notice. At the onset however it is important to state the process upon which a receiving party can challenge such a notice.



6. Section 6(1) of [Cap. 301](#), Laws of Kenya provides as follows:-

“A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) of this Act that he does not agree to comply with the tenancy notice, may it before the date upon which such notice is to take effect, refer the matter to a Tribunal, where upon such notice shall be of no effect until, and subject to the determination of the reference by the Tribunal, provided that a Tribunal may for sufficient reason and on such conditions as it may think fit, permit such a reference notwithstanding that the receiving party has not complied with any of the requirements of this section”.

7. In the present dispute, no notice was issued by the Tenant whether or not he agreed to comply with the notice as required under section 4(5) of [Cap. 301](#), laws of Kenya neither did she file a reference as required under section 6(1) thereof. Ordinarily as a result, the notice took effect on 1st May, 2023 as expressed therein. Section 10 of [Cap 301](#) provides that where a Tenant who has received a notice from the Landlord to terminate fails to refer the matter to the Tribunal, then the notice has effect from the date therein specified.
8. Section 6(1) of the [Act](#) however contains a proviso that grants discretion to the Tribunal for sufficient reason and on such conditions as it may think fit permit such reference notwithstanding that the receiving party has not complied with any of the requirements of the section.
9. Like every other discretion, the power to allow filing of a reference out of time is to be exercised judicially. It is not to be exercised capriciously or in order to aid an indolent litigant who is woken up from slumber through subsequent events.
10. In determining the present dispute, I have considered the decisions of the superior courts and in particular the guiding principles by the supreme court on applications for extension of time which were set as follows:
 - a. extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
 - b. a party who sought for extension of time had the burden of laying a basis to the satisfaction of the court;
 - c. whether the court should exercise the discretion to extend time, was a consideration to be made on a case-to-case basis;
 - d. whether there was a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 - e. whether there would be any prejudice suffered by the respondents if the extension was granted;
 - f. whether the application had been brought without undue delay; and
 - g. whether in certain cases, like election petitions, public interest should be a consideration for extending time.
11. The Tenant attributes his failure to file a reference and objection to oversight, inadvertence and an excusable mistake. He has failed to give any further explanation to this. Instead of making any attempts to offer a plausible explanation on their failure to file an objection or reference, he has focused on attacking the merits of the impugned notice. If indeed he was aggrieved by the said notice, he ought to have sprung into action with the same velocity he has used to attack it.



12. This Tribunal is alive to the provisions of Article 159 on the need to strike a balance between the procedural technicality and the substance of justice. The supreme court has pronounced itself that the said article of the constitution is not a panacea of all the procedural technicalities. The rule of law dictates that parties also comply with the rules of procedure which are important tenets in ensuring fair hearing. In my view, the predicament in which the tenant finds himself is self-inflicted. Equity aids the vigilant and not the indolent.
13. Having made the above findings, the Tribunal agrees with the landlady that its jurisdiction was ousted by the lapse of the notice as at 1st May, 2023. The tenant's application is therefore dismissed with costs assessed at Kshs. 50,000. The tenant shall forthwith yield possession of the demised premise to the landlady.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15TH DAY OF NOVEMBER 2023.

HON. PATRICIA MAY

MEMBER

15. 10.2023

