



**Odit v Gachangi (Tribunal Case E087 of 2024)  
[2024] KEBPRT 1139 (KLR) (7 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1139 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E087 OF 2024  
M MAKORI, MEMBER  
MAY 7, 2024**

**BETWEEN**

**STEPHEN OTIENO ODIT ..... TENANT**

**AND**

**MARY WAMBUI GACHANGI ..... LANDLADY**

**RULING**

1. The present claim was filed vide a reference dated 25<sup>th</sup> January 2024.
2. In response the landlady filed a replying affidavit dated the 10<sup>th</sup> February 2024 denying the claims and making claims that there exists rent arrears amounting to Kenya shillings Eighty-seven thousand (Ksh 87,000).
3. The Tenant filed a further affidavit dated the 22<sup>nd</sup> February 2024 attaching photographs and conversations between him and the landlady.
4. From the totality of the pleadings filed by parties and submissions several issues arise for determination. In arriving on a determination on the matter it is proper to establish whether there exists rent arrears and if so whether the notice issued is valid.

**Whether the landlord is entitled to the rent arrears as claimed?**

1. The landlord in his replying affidavit has made claim that there exists rent arrears of Kenya shillings Eighty-seven thousand as at the 10<sup>th</sup> of February 2024 and in support of his claim he has attached, the agreement signed between both parties and to which it establishes the landlord-tenant relationship, an Mpesa statement, a letter from the chief and WhatsApp conversations between the her and the landlady.



2. The Applicant/Tenant denied the claims made attaches photos and descriptions, Receipts of travel, Mpesa messages and statements purportedly making payments to the landlord.
3. From the perusal of the agreement, it is clear that any repair to be undertaken by the landlord ought to be communicated to the landlady on time. The agreement does not state what is to happen upon the landlady receiving the information, however it is noted from general conduct of the parties that the landlady ought to undertake the repairs.
4. From the evidence adduced by the tenant there exists only one communication of repairs to be made that totaled up to a sum of Kenya shillings Sixty thousand (ksh 60,000) a fact admitted under paragraph 20 of the replying affidavit of the landlord however he indicates that the said was done against her wish.
5. Having analyzed that the said agreement and identifying That the landlady ought to have made the repairs and having neglected her duties, the tribunal establishes that the tenant rightfully conducted the said repairs using the rent that ought to have been paid.
6. However, from the assessment of the claims of rent arrears if any, the tribunal identifies that there is exists rent arrears of Kenya shillings Eighty-seven Thousand.
7. The tenant by his own admission has attached a correspondence of the landlady's son asking for payment of an accrued rent arrears in the month of October and November 2023 clearly shows that the tenant has not been making his rental dues on time and in total non-compliance of the terms of the agreement.
8. That further the tenant has not shown or provided documentary evidence on how the claimed arrears have been settled.
9. Based on the above assertions and having identified that there are indeed accrued rent arrears and existing cost of repairs made by the tenant the same is set off and the remaining amount owed to the landlady is valued at Kenya Shillings Twenty-seven thousand (ksh 27,000).

**Whether a valid notice was issued.**

10. For formal requirements of notice of termination of a tenancy I am guided by section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 Laws of Kenya (hereinafter referred to as 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 tenant in the prescribed form.”
11. Additionally, Section 4(4) 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, unless the terms and conditions of the tenancy provide for a period exceeding two months or the parties to the tenancy agree in writing to a lesser period of notice.
12. The two requirements therefore for a valid notice of termination of the tenancy is first, that the notice shall be in the prescribed form and secondly, that the notice shall not take effect until after expiry of two months, or such notice period as may be agreed by the parties.



13. This was emphasized in the case of *Munaver N Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited* [1995] eKLR, where the Court of Appeal at Mombasa in finding that the notice of termination of the tenancy was void for failing to comply with Section 4 of the Act 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 grounds on 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.”
14. Additionally, according to Section 4(2) mentioned above, the Notice of Termination of tenancy should be the prescribed form, specifically Form A, as provided for in the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966.
15. The Act further provides for the grounds on which the Landlord may seek to terminate the tenancy in Section 7 *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 Laws of Kenya the grounds stated under this provision and which are applicable herein include;
- i. 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;
  - ii. that the tenant has committed other substantial breaches of his obligations under the tenancy, or for any other reason connected with the tenant’s use or management of the premises comprised in the tenancy; and
  - iii. that on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises;
16. The tenant has provided a notice to vacate dated the 24<sup>th</sup> of November 2023 received from Mary Wambui Gachangi. The same purports to issue a two months’ notice to the tenant to vacate before the 1<sup>st</sup> of February 2024. The issuance of the notice is not disputed by the landlord.
17. A cursory look of the notice clearly shows that it is in the recommended form A as provided for in the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966 and as such in form it is considered as valid notice.
18. Having also identified that there indeed exists rent arrears this tribunal identifies that all the terms of a valid notice has been met.
19. The Tribunal find that the reference by the Tenant is merited and makes the following orders; -
- a. The Applicant’s reference and notice of motion Application dated 8<sup>th</sup> January 2024 is dismissed.
  - b. This being a case involving a school and acknowledging that there are children who shall be affected by the said decision the tenant shall vacate the premise at the end of the academic year.



- c. That the tenant shall make payment of the rent arrears of Kenya shillings twenty-seven thousand (Ksh 27,000) within two months and payment of all rent payments as they fall due failure and in default of two months' rent arrears by the 10<sup>th</sup> of every month the landlord shall be in liberty to vacate the tenant.
- d. That the OCS of Kayole Police Station do assist in compliance of the orders
- e. Each party to bear their own costs of the application.

**HON. MIKE MAKORI.....MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON MIKE MAKORI THIS 7<sup>TH</sup> MAY, 2024 IN THE PRESENCE OF MR. KURIA NDEGWA FOR THE RESPONDENT AND MR. STEPHEN ODIT THE TENANT.**

**HON. MIKE MAKORI..... MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

