



**Ezra Times Ltd v Koome (Tribunal Case E027 of 2024)  
[2024] KEBPRT 1564 (KLR) (12 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1564 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E027 OF 2024  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
NOVEMBER 12, 2024**

**BETWEEN**

**EZRA TIMES LTD ..... APPLICANT**

**AND**

**GEORGE KOOME ..... RESPONDENT**

**RULING**

1. The landlady issued the termination notice dated 26<sup>th</sup> October 2023 to the Tenant and which was to take effect on the 1<sup>st</sup> January 2024. “The notice was on the ground that “ Under section 7(1) (b) of the Landlord and Tenant (Shops, Hotels and Catering Establishment) in that the Tenant has persistently delayed in paying rent which has become due or payable resulting in repeated distress proceedings”.
2. It appears that the Tenant did not respond to the Tenancy notice as required by the law. The landlady moved court by the reference dated 1<sup>st</sup> March 2024 and a notice of motion of the even date with a view to enforcing the said notice of termination. In the reference, the Landlord sought for the following orders:-
  - i. The tenant tenancy be terminated and be ordered to vacate from the premises and give vacant possession.
  - ii. There be an order of eviction against the Tenant and OCS Nanyuki Police Station to enforce the order.
  - iii. That there be a breaking order to be executed by an authorized auctioneer.
  - iv. That there be an order for distress for rent.
  - v. That there be an order for compelling the Tenant to pay rent arrears.
  - vi. That costs be provided for.



3. The Tenant on his part filed the Replying Affidavit dated 8<sup>th</sup> July 2024. He never contested the claim for rent arrears by the Landlord. His only assertion was that he had done renovations to the demised premises. Some of the claimed developments and renovations were electrical wiring, tiling the offices, painting, fixing the ceiling among others. He however did not provide any evidence to support such undertakings or that he had the authority of the landlady to action the same.
4. On her part, the landlady filed the supplementary affidavit sworn by George Mbijiwe on the 5<sup>th</sup> August 2024 and the submissions dated 4<sup>th</sup> September 2024. She denied that she authorized the alleged renovations nor that the same were carried out. She however admitted that the Tenant had fixed a metal door to his offices and that she was ready to compensate him for the same.
5. The landlady asserted that at the time of filing her submissions on the 4<sup>th</sup> September 2022 the Tenant owed her rent in arrears at Kshs.122,060. Therefore, if the rents for September, October and November, 2024 are factored in at Kshs.6,000/- per month, the total in rent in arrears would be Kshs.140,060/-.
6. From the record it is clear and is without contest that the Tenant was served with the notice of termination dated 26<sup>th</sup> October 2024 but did not object to the same. The service is evidenced by the Affidavit of service sworn by one Derrick M. Maingi on the 1<sup>st</sup> March 2024.
7. Having perused the parties pleadings including the landlady's submissions and the case law cited, we are of the view that the issues for determination in this matter are the following:-
  - A. Whether the landlady has proved her cases on a balance of probabilities.
  - B. Who should bear the costs of this suit.
8. Before we venture into the issues for determination above, we appreciate that though the Tenant has raised a lot of issues including claims for compensation in his replying affidavit dated 8<sup>th</sup> July 2024, he has not in any way moved this court by way of a claim or counter-claim regarding the same. It is the landlady who issued the notice of termination and literally dragged the Tenant to court in the enforcement of the notice of termination. In essence we are saying that the Tenant has no claim before us for determination.
9. We are further cognizant of the reality that the landlady's prayers in the reference are the same duplicated in the notice of motion of the even date. It therefore follows that a determination of the Application will render the reference resolved in the same terms.

**ISSUE NO. A: Whether the landlady has proved her case on a balance of probabilities**

10. The foundation of this suit is the notice of termination dated 26<sup>th</sup> October 2023. In our view, the same is well grounded in law and qualified on the issue of procedural compliance. Section 4(2) of 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. The notice must be for a period of not less than two months and which the landlady has complied with. Section 4(4) of the Act 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 as shall be specified therein”.

12. The Landlady in her notice was also compliant with Section 7 (1) of the Act by providing the ground for the termination and in particular section 7(1) (b) which provides 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”.

13. In this matter, the Tenant has not denied that he was in rent arrears for 9 months when the landlady issued the notice and eventually moved the court. The claim by the Tenant that the demised premises had been locked up by the Landlady cannot be true. No evidence was availed to court to that effect including photographic evidence of such eventuality. The Tenant did also not raise such issues until he was dragged into this court by the landlady.

14. In our view the failure by the Tenant to raise any objection to the termination notice had it effectively take effect on the 1<sup>st</sup> January 2024 as was intended by the landlady. This position is fortified by the fact that the landlady is also in complete with Section 4(1), 4(4) and 7(1) of the Act and Regulation 4(1) of the Regulations to the Act in issuing the notice.

15. Section 10 of the Act provides that:-

“Where a Landlord has served a notice in accordance with the requirements of Section 4 of this Act, on a tenant, and the tenant fails within the appropriate time to notify the landlord of his unwillingness to comply with such notice or to refer the matter to a Tribunal, then subject to Section 6 of this Act, such a notice shall have effect from the date therein specified to terminate the Tenancy, or terminate or alter the terms and conditions, thereof or the rights or services enjoyed thereunder”.

16. This is to say that the Landlord and Tenant relationship herein terminated on the 1<sup>st</sup> January 2024. What the Tenant has been therefore paying since if at all, and what the landlady is entitled to is mesne profits. We therefore would uphold the landlords termination notice dated 26<sup>th</sup> October 2023.

17. Though the Tenant has no claim before us, even if one was rife for determination, it would have been most unlikely to succeed. The law frowns on a tenant who does not meet his cardinal obligations in terms of payment of rent and more so those with huge arrears in rent.

18. In the case of Samuel Kipkorir Ngeno & Another – vs- Local Authorities Pension Trust (Registered Trustees) & Another (2013) e KLR the 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 principle obligation of paying rent as and when it becomes due”.



19. In the case of Nanyuki Equator Savings and Credit Society Ltd – vs- Jane Nyawira Kiama (2017) eKLR the court held that:-

“On account of that admission and the evidence flanked out by the court which shows that the Appellant has always been 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 obligations to pay rent in advance as opposed to in arrears”.

The court thus upheld the decision of the Tribunal to terminate the Landlord and Tenant relationship between the parties.

20. In the case of Yusuf Abdulswamad -vs- Halthar Haji, Abdi (2021) e KLR the court held that:-

“From the evidence on record, and in his own admission, the appellant admitted that he would pay rent in arrears. It is also true that the appellant would pay rent in advance, but the evidence on record indicates that that was only done at the request of the respondent. The appellant in my view, cannot hang on the instances when the respondent was paid rent in arrears and invoke the equitable doctrine of estoppel. It is therefore clear that the appellant was in rent arrears for 2 months which is a breach of Section 7(1) (b) of Cap. 301. In light of this, it is my opinion and I so find, that the learned chairman of the Tribunal was right in terminating the tenancy on account of the appellant’s being persistently in arrears of rent”.

21. We therefore do confirm the termination of the tenancy between the parties herein. The Tenant shall therefore pay all the rents in arrears and mesne profits at Kshs.140,060 if no further payment has been paid since 1<sup>st</sup> September 2024. If any has been paid it will be deducted from that amount. The Tenant will also be required to vacate the demised premises effective 30<sup>th</sup> November 2024 or be evicted therefrom.
22. On the issue of costs, we abide the conventional wisdom of Section 27 of the Civil Procedure Act and the proviso thereto and award costs to the landlady who is the successful party in this matter.
23. In the final analysis, we make the following orders:-
- i. That the notice of termination dated 26<sup>th</sup> October 2023 is upheld and the same took effect on the 1<sup>st</sup> January 2024.
  - ii. That the Tenant shall vacate the demised premises effective the 30<sup>th</sup> November 2024 or be evicted with the assistance of the OCS Nanyuki Police Station at his cost.
  - iii. That the Tenant shall pay all the rents in arrears and mesne profits by the 30<sup>th</sup> November 2024 and in default the landlady shall be at liberty to levy distress at the Tenant’s cost.
  - iv. That the Tenant shall pay costs to the Landlady assessed at Kshs.20,000/-.

Those are the orders of the court.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12<sup>TH</sup> DAY OF NOVEMBER, 2024.**

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

**PANEL CHAIRPERSON, MEMBER,**

**BUSINESS PREMISES RENT TRIBUNAL BPRT**



Ruling delivered in the presence of Mr. Mwangi Maingi for the Landlady/applicant and in the absence of the Tenant.

