



**Emmah v Mepukori (Tribunal Case E858 of 2022)
[2023] KEBPRT 366 (KLR) (Civ) (8 June 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 366 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E858 OF 2022
A MUMA, VICE CHAIR
JUNE 8, 2023**

BETWEEN

CHEMTAI EMMAH TENANT

AND

ALICE WANGUI MEPUKORI LANDLORD

JUDGMENT

1. The Applicant Chemtai Emmah is the Tenant and rented space on the suit property known as Ngong/ Ngong 60439 Ongata Rongai (hereinafter known as the Tenant).
2. The firm of M/S Rosemay Monyangi & Company Advocates represents the Tenant/Applicant
3. The Alice Wangui Mepukori is the Landlady of a rented business space situate at property known as Ngong/ Ngong 60439 Ongata Rongai (hereinafter known as the Landlady)
4. The firm of M/S Kabuthia Kamau & Associates represents the Respondent/Landlady

B.The Dispute Background.

5. The Tenant filed a reference dated September 27, 2022 challenging the Landlady's Notice to terminate the Tenancy dated July 27, 2022. The notice was to take effect from October 1, 2022.
6. The Tenant filed Submissions dated February 20, 2023
7. The Landlady filed Submissions dated February 6, 2023

C. Jurisdiction

8. The court's jurisdiction is not in dispute.



D. The Tenants Claim.

9. The Tenant filed a reference dated September 27, 2022 in opposition of a Notice to terminate tenancy issued by the Landlord
10. The Tenant filed a Supplementary Affidavit dated March 7, 2023.

E. The Landlord's Claim.

11. The Landlord issued the Tenant with a Notice to terminate tenancy dated July 27, 2022
12. Parties have filed written submissions and the matter was fixed for ruling on June 8, 2023.

F. List Of Issues For Determination.

13. The issue raised for determination is as follows;
 - i. Whether the Landlord's notice of termination of Tenancy dated July 27, 2022 is valid?

G. Analysis And Findings

Whether the Landlord's notice of termination of Tenancy dated July 27, 2022 is lawful and valid

14. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya Act at section 4(2) 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.

15. Section 4(4) further 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

16. In the case of *Manaver N Alibhai T/A Diani Boutique vs South Coast Fitness & Sports Centre Limited*, Civil Appeal No. 203 of 1994 it was 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 ground upon 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.

17. In this case the Landlord issued the tenant with a Notice to terminate tenancy on July 27, 2022 which was to take effect from September 27, 2022. Based on the above provision, the said notice was to take effect after two months which is as per the Provisions of cap 301. As such the said notice can be deemed to be valid.



18. Section 7(1)(g) of The [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Chapter 301 Laws of Kenya Act provides that some of the grounds upon which the Landlord may seek to terminate tenancy include;

(g) subject as hereinafter provided, that on the termination of the tenancy the landlord himself intends to occupy for a period of not less than one year the premises comprised in the tenancy for the purposes, or partly for the purposes, of a business to be carried on by him therein, or at his residence.

19. The court provided a threshold that landlords have to meet before they can satisfactorily be granted possession and stated as follows:

“For this purpose the Court must be satisfied that the intention to reconstruct is genuine and not colorable: that it is a firm and settled intention, not likely to be changed: that the reconstruction is of a substantial part of the premises, indeed so substantial that it cannot be thought to be a device to get possession; that the work is so extensive that it is necessary to get possession of the holding in order to do it; and that it is intended to do the work at once and not after a time. Unless the Court were to insist strictly on these requirements, tenants might be deprived of the protection which Parliament intended them to have. It must be remembered that, if the landlord, having got possession, honestly changes his mind and does not do any work of reconstruction, the tenant has no remedy. Hence the necessity for a firm and settled intention

20. It was also stated in the case of [Fisher v Taylors Furnishing Stores Ltd](#) [1956] 2 All ER 78, that;

There must, therefore, be an intention and it must be an intention which in point of time is related to the termination of the current tenancy. It seems to me that the intention must be to do one of the following things: (i) to demolish the premises comprised in the holding; or (ii) to reconstruct the premises comprised in the holding; or (iii) to demolish a substantial part of the premises comprised in the holding; or (iv) to reconstruct a substantial part of the premises comprised in the holding; or (v) to carry out substantial work of construction on the holding; or (vi) to carry out substantial work of construction on a part of the holding.

If the landlord prove an intention to do one of those things, and to do it on the termination of the current tenancy, he must then prove that he could not reasonably do it without obtaining possession of the holding.

21. In the current case the notice issued by the Landlord stated that the grounds for termination were to put the premises to their own use. It is the contention of this Tribunal that the landlord has satisfied the above stated requirements to show their firm and settled intention to use the premises.
22. They have attached proof in the form of photographs of the stock intended for the new business as well as accounts of the applicant’s daughter to show this Tribunal of their intended use. On this basis therefore, I find that the Landlord has convinced this Honourable Court that the renovations to be conducted in the suit premises are substantial and extensive in nature and require vacant possession of the suit premises.

H. Orders

- a. The tenant’s reference dated September 27, 2022 is hereby dismissed



- b. The tenant shall grant the Landlord vacant possession of the premises on or before June 30, 2023 failure to which the landlord is at liberty to reclaim the suit premises through break in with the assistance of Rongai Police.
- c. Each party shall bear their own costs

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Judgement dated, signed and delivered virtually by Hon. Muma this 8th day of June 2023 in the Presence of Kamau for the Landlord and Monyangi for the Tenant.

HON. A MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

