



**Akubu & another v Mwaniki (Tribunal Case E084 of 2023)
[2023] KEBPRT 470 (KLR) (1 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 470 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E084 OF 2023
A MUMA, AG. CHAIR
SEPTEMBER 1, 2023**

BETWEEN

HOWARD PETER AKUBU 1ST APPLICANT

PAUL KIARIE MWEGA 2ND APPLICANT

AND

ISAIAH NDUNG’U MWANIKI RESPONDENT

RULING

A. Parties and Representatives

1. The Applicants are the tenant who rented space on LR No 13330/118 Nairobi for the business (hereinafter known as the ‘tenant’).
2. The Firm of M’limbiine & Mungai Advocates represents the tenant in this matter.
3. The Respondent is the registered proprietor of the suit premises and the Landlord.
4. The firm of Gatundu & Co Advocates represents the Landlord in this matter.

B. The Dispute Background

5. The Tenant approached the Tribunal vide a Reference dated January 26, 2023 and an application of even date under Certificate of Urgency dated under Section 10 and 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301. The tenant was seeking orders restraining the landlord from evicting them and interfering with their possession of the premises after the landlord served them with a Notice to Terminate tenancy October 5, 2022 which was to take effect on January 6, 2023.



C. List of Issues

6. The issues raised for determination are as follows:

Whether the Notice to terminate tenancy issued by the landlord and the reasons advanced are valid?

D. Analysis and Findings

Whether the Notice to terminate tenancy issued by the landlord and the reasons advanced are valid?

7. The present suit stems from the Reference and Application by the tenant in which they were seeking protection from eviction and distress by the landlord. This is due to a Notice to Terminate tenancy that was issued by the landlord dated October 5, 2022 which was to take effect on January 6, 2023.
8. The grounds upon which the notice was issued is that the tenant had constantly defaulted on rent payment. As a result, the tenant was also seeking orders that the landlord issue them with accounts of rent.
9. The tenant denies being in rent arrears and avers that they had an agreement with the landlord in which the tenant was supposed to extend/repair sewer lines in the premises and thereafter deduct 50% of the rent in order to recover the costs incurred.
10. The landlord in response claims that in addition to being in arrears they had made it known to the tenant that they did not intend to renew the agreement upon expiry.
11. Additionally, the landlord claims that there was a material breach by the tenant by virtue of the fact that they had sublet the premises to 18 other tenants, a fact which is not disputed by the tenant.
12. They also claim that there was no such agreement between themselves and the tenant where the tenant was expected to repair the sewer line and deduct from the rent.
13. It is as a result of these acts of breach by the tenant that the landlord sought to terminate the tenancy.
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 October 5, 2022 which was to take effect from January 6, 2023. Based on the above provision, the said notice was to take effect after more than two months which is as per the Provisions of cap 301. As such the said notice can be deemed to be valid.
18. Having established that the Notice issued by the Landlord to the tenant was valid, in relation to the period, the other question for determination before the Tribunal is with regards to the reasons advanced for wanting to terminate the tenancy.
19. In the current case, the landlord stated the constant default by the tenant to meet their rental obligations as the main reason for terminating the tenancy.
20. From the proceedings of this Tribunal, it is evident that the issue of arrears has come up several times. The parties have tried to negotiate out of court but the same was not successful.
21. The parties are unable to agree as to what rate the rent should be paid, i.e whether the escalation rates should be applied or not. They are also unable to agree on whether the alleged Kshs 300,000 that the tenant claims to have used for sewer lines repairs should be refunded or not.
22. The tenant has attempted to annex minutes of a meeting in which they claim to have agreed with the landlord to repair the sewer lines. I however observe that the same were not signed by the landlord and as a result I am unable to rely on them.
23. I also take note that parties have filed Statements of Account before the Tribunal in order to prove their arrears. The landlord has annexed statements since 2020 while the tenants have only annexed statements for the year 2022.
24. Owing to the fact that a lot of time has lapsed since the matter commenced and additionally, that the notice was valid, I am unable to accord the tenant more time to provide proof of payment of rent for the unaccounted years. I am therefore persuaded to uphold the landlord’s statements as they provide a clearer picture of rent payment for the entire lease period.
25. The tenant has constantly claimed they are not in arrears and relied on the issue of the sewer lines. I however have no evidence tabled before me that the tenant and the landlord agreed to have the costs of the repairs deducted from rent.
26. I also observe that the tenant has insisted that the escalation rate should not be applied when calculating the arrears. From the proceedings of August 7, 2023, the landlord stated that even if they were to consider the rent without the escalation rate, the tenant would still be in arrears of roughly Kshs 500,000.00.
27. The landlord went a step further and provided an affidavit dated August 4, 2023 stating that the arrears as at the time stood at Kshs 579,540.00. the tenant did not respond to the same and as such it remains unopposed.
28. Seeing as the notice issued by the landlord was valid and the reasons advanced have been justified, I proceed to order as follows;



E. Orders

- a. The upshot is that the Tenant's Reference and Application dated January 26, 2023 are hereby dismissed in the following terms;
- b. The tenant shall offset the arrears owed to the landlord being Kshs 579,540.00 as at August 2023 within 30 days from today.
- c. Failure by the tenant to comply with order (b) above shall accord the landlord the liberty to distress, break in and take back possession of the property with the assistance of OCS Kasarani Police Station.
- d. The landlord shall have costs assessed at 30,000 also payable within 30 days from the date of this ruling.

HON A. MUMA

Ag Chair/Member

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Ruling dated, signed and delivered virtually by **Hon. Muma** this **1st** day of **September 2023** in the Presence of **Meruaki** holding brief for **Gitonga** for the Tenants and **Gatundu** for the Landlord.

HON. A MUMA

Ag Chair/Member

BUSINESS PREMISES RENT TRIBUNAL

