



**Colin Stuart t/a Little Bay Investment Ltd v Yego (Tribunal Case
E079 of 2024) [2024] KEBPRT 1221 (KLR) (29 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1221 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E079 OF 2024
A MUMA, MEMBER
AUGUST 29, 2024**

BETWEEN
COLIN STUART T/A LITTLE BAY INVESTMENT LTD APPLICANT
AND
MICHAEL YEGO RESPONDENT

RULING

A. Parties And Representatives

1. The Applicant, Colin Stuart T/A Little Bay Investment Ltd., is the owner of Shop No. 113 located at Digo Bazaar situated in Diani, being the suit premises herein (hereinafter the “Landlord”).
2. The firm of Dagaye & Company Advocates represents the Landlord in this matter.
3. The Respondent, Michael Yego, is the tenant and had rented space for business in the suit property (hereinafter the “Tenant”).
4. The firm of Wonanio & Kabiario Advocates represents the Tenant in this matter.

B. Background Of The Dispute

5. The Landlord moved this Tribunal vide a Reference and a Notice of Motion Application filed under a Certificate of Urgency both dated 14th March, 2024 on a complaint that the Tenant has refused to hand over vacant possession to the Landlord despite being issued with a Termination Notice as per the provisions of the Landlord and Tenant (Shops, Hotel and Catering Establishments) Act.
6. In response thereto, the Tenant filed a Replying Affidavit dated 10th May 2024 and the Landlord correspondingly filed a Further Affidavit dated 5th June 2024.



7. The Tribunal directed that the Application dated 14th March 2024 will be canvassed by way of written submissions and accordingly, the Landlord filed its Written Submissions dated 3rd July 2024 while the Tenant filed his Written Submissions dated 10th July 2024.

C. The Landlord's Claim

9. The Landlord submits that the nature of their tenancy is a controlled tenancy governed by a written agreement that commenced on or about February 2022 and was for a period of 5 years.
10. The Landlord also submits that the tenancy between itself and the Tenant had been terminated vide a Notice to Terminate dated 8th December 2023 (hereinafter "the Notice") which was meant to take effect on 1st March 2024 being two months after issuance of the Notice.
11. It is the Landlord's averment that the Notice was issued in accordance with the Landlord and Tenant (Shops, Hotel and Catering Establishments) Act which provides for termination of a controlled tenancy.
12. Ultimately, the Landlord urged the Tribunal to allow the Landlord's Reference and Notice of Motion Application with costs to the Tenant.

D. The Tenant's Claim

13. The Tenant agrees that the Agreement between himself and the Landlord began in February 2022 for the period of five (5) years subject to renewal upon the expiration of the Agreement in 2026 thus the tenancy is a controlled tenancy.
14. In light of the same, the Tenant avers that he had the firm believe that the tenancy was going to be a long-term business relationship and consequently invested heavily in the suit premises by erecting semi-permanent structures and conducting renovations on the let space with the full knowledge and consent of the Landlord.
15. The Tenant also states that the suit premises, which is situated on the ground floor of the building, was subject to leakage arising from the unfinished state of the first floor which was still under construction and heavy rainfall caused water to leak through the pipes containing electric cables leading to destruction of the Tenant's electronics. The Tenant avers that he incurred a cost of Kshs. 56,000.00 for repair and replacement of the electronics and Kshs. 28,000.00 for repair of the leaking roof.
16. It is the Tenant's averment that the Landlord instituted termination as a scape goat for compensating the Tenant for the aforementioned repairs.

E. List Of Issues For Determination

17. Having given full consideration to the submissions filed by Counsels, the issue for determination is;
- a. Whether the Notice to Terminate dated 8th December 2023 is valid and as such, whether the Tenant should hand over vacant possession to the Landlord?

F. Analysis & Determination

18. The Submissions filed by the parties raises fundamental issues discussed herein below:
- a) Whether the Notice to Terminate dated 8th December 2023 is valid and as such, whether the Tenant should hand over vacant possession to the Landlord?



19. 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.”
20. Section 4(4) of Cap 301 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.”
21. 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.”
22. Section 4(5) of the Act states:
- “A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and requires the receiving party to notify the requesting party in writing, within one month after the date of receipt of the notice, whether or not he agrees to comply with the notice.”
23. In this case the Landlords issued the tenant with the Notice on 8th December 2023 which was to take effect from 1st March 2024. 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.
24. Moreover, the Notice provided for the recipient to communicate whether or not they intend to comply with the Notice within one month after receipt thereof. This is in line with the provision encompassed in Section 4(5) of the Act which establishes the contents of an effective termination notice.
25. The main question for determination that remains before this Tribunal is with regards to the substance of the said Notice.
26. Section 7 of the Act provides for the grounds within which Landlord is allowed to issue a termination notice and at subsection (g) it provides as follows;
- “Where under section 4 of this Act served a notice of termination of a controlled tenancy on the tenant, the grounds on which the landlord seeks to terminate such tenancy may be such of the following grounds as are stated in the aforesaid notice—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.”

27. It is of equal importance to highlight the guidelines of opposing a termination notice as provided for in Section 6(1) of the Landlord & Tenant Act which states 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, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon 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.”

28. Pursuant to the above provision, this Tribunal is of the view that the Tenant had sufficient time and means to oppose the Notice but he did not issue written communication that he did not agree to comply with the Notice within a month after receipt of the Notice. Neither did the Tenant refer the matter to a tribunal before the Notice was to take effect being 1st March 2024.
29. Inferring from the Tenant’s behavior as outlined hereinabove, the Tribunal is of the impression that the Tenant was willing to comply with the Notice as he did not follow due procedure of opposing the said Notice.
30. Therefore, it remains unclear why the Tenant refuses and/or neglects to hand over vacant possession to the Landlord whilst he had opportunity to legally oppose the termination notice before the date it was meant to take effect.
31. The Court opines that the Tenant is raising issues that are not pertinent to the matter at hand and whilst we hold high regard for the weight of the issues raised herein by the Tenant, the Tenant should have sought redress for the same in the manner prescribed by the law.
32. Accordingly, this Tribunal is guided by the provisions of the law encapsulated in the Landlord and Tenant Act and is inclined to uphold the validity and legality of the Termination Notice dated 8th December 2023 as it fully satisfies the requirements of a valid Termination Notice as per the aforesaid Act.

G. Orders

33. The upshot is that the Landlords Reference and Notice of Motion Application dated 14th March 2024 are dismissed with orders as follows:
- The Tenant is hereby ordered to hand over vacant possession to the Landlord within thirty (30) days after issuance of this Ruling;
 - Upon the Tenant’s failure to comply, the Landlord is at liberty to break into the suit premises and take vacant possession of the same;
 - O.C.S Ukunda Police Station to ensure compliance of these Orders; and
 - Costs of the suit to be borne by the Tenant at Kshs. Ten Thousand Only (10,000.00)

HON A. MUMA

MEMBER



BUSINESS PREMISES RENT TRIBUNAL

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 29^H DAY
OF AUGUST 2024**

in the presence of Ms. Wanjiku for the Tenant and in the absence of the Landlord.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

