



**Wambura v Morumbwa (Tribunal Case E143 of 2023)
[2023] KEBPRT 1200 (KLR) (13 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1200 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E143 OF 2023
M MAKORI, MEMBER
NOVEMBER 13, 2023**

BETWEEN

JOSEPHAT KIMANI WAMBURA LANDLORD

AND

SHEM OSIAGO MORUMBWA TENANT

RULING

1. The Applicant/Landlord filed an application dated 9/8/2023 seeking to enforce a Notice of Termination dated 21/6/2023 and which was to lapse on 1/9/2023.
2. The Respondent/Tenant filed a Notice of Preliminary Objection dated 21/8/2023 and a Replying Affidavit dated 14/9/2023.
3. That 20/9/2023 I directed that the Notice of Preliminary Objection dated 21/8/2023 and Application dated 9/8/2023 shall be determined concurrently and allowed parties an opportunity to file their written submissions.
4. From the totality of the pleadings filed by the parties and submissions thereto, the single most issue for determination is Whether the Landlord's notice of termination of Tenancy dated 21/6/2023 and to take effect on 1/9/2023 is enforceable vide application dated 9/8/2023.
5. In addressing this issue, I shall consider two aspects: the formal requirements of a notice for termination of a tenancy agreement and the Landlord's grounds for termination of the tenancy.



6. 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.”

7. 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.

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 Provided that—

- i. where notice is given of the termination of a controlled tenancy, the date of termination shall not be earlier than the earliest date on which, but for the provisions of this Act, the tenancy would have, or could have been, terminated;
 - ii. where the terms and conditions of a controlled tenancy provide for a period of notice exceeding two months, that period shall be substituted for the said period of two months after the receipt of the tenancy notice;
 - iii. the parties to the tenancy may agree in writing to any lesser period of notice
8. 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. 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.”

9. Based on the evidence tendered before this Honourable Court, it is evident that the parties in their agreement had a provision for the period of notice required before termination of the tenancy agreement. As such, section 4(4) of the *Act* as mentioned above applies, thus the default notice period for termination of the tenancy herein is two months.
10. The notice to vacate was issued by the Landlord on 21/6/2023, and required the Tenant to vacate the premises by 1/9/2023. I note that the duration of the notice above the had not lapsed when as prescribed when the application dated 9/8/2023 was filed.



11. The court further takes notice of the receipts issued on 10/8/2023 and Printed on 11/8/2023 for payment of Kshs 1,220.00 being the filing fees for the application dated 9/8/2023.
12. Through the entirety of the pleadings, though not raised by the Tenant the court notes that no explanation was given why an application dated 9/8/2023 was filed on 10/8/2023 and before the stipulated time of 1/9/2023 in the Notice dated 21/6/2023.
13. 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.
14. The Landlord's notice of termination of the tenancy was in Form A as prescribed by the [Act](#). The notice of termination of the tenancy herein therefore meets the requirement of the [Act](#) with regard to being in the prescribed form.
15. According to Form A as provided in the Regulations above mentioned, the Landlord's notice to terminate the terms of the Tenancy herein should have specified;
 - a. The Landlord's premises occupied by the Tenant;
 - b. The duration of the notice of terminating the tenancy and the date when the notice is to take effect;
 - c. The grounds for termination of the tenancy;
 - d. The requirement that the Tenant should within one month notify the Landlord in writing whether or not the Tenant agrees to comply with the notice as from the date of receipt of the notice.
16. I am convinced that in substance, the Notice Dated 21/6/2023 is compliant with the provisions of [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 Laws of Kenya.
17. The court is of the holds that the provision of section 4(5) as captured below does not foreclose a two months' duration as provided for in section 4(4) of [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 Laws of Kenya after which the notice is supposed to take effect.

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
18. In my mind, the requirements to respond within one month by the receiving party of the notice fortifies the steps to me taken by the issuing party after the lapse of the stipulated timeline.
19. Flowing from above, I note that the Landlord/Application never allowed the said notice to fruition, the application dated 9/8/2023 was filed on 10/8/2023 way before the stipulated timeline for the maturity of Notice being the 1/9/2023.
20. The notice dated 21/6/2023 could not take effect until the lapse of stipulated timelines and pursuant to provisions of Section 4(4) of [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 Laws of Kenya.
21. In the upshot and based on the foregoing, the Tribunal makes the following orders



- a. The Notice of Preliminary Objection dated 21/8/2023 succeeds in its entirety.
- b. The Notice of Motion application dated 9/8/2023 is dismissed with costs.
- c. The Tenant to comply with terms of tenancy agreement failure to which the Landlord is at liberty to issue a fresh notice as prescribed in Law.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF NOVEMBER, 2023.

HON. MIKE MAKORI (MR.) - MEMBER

13.11.2023

