



**Chepyegon v Kiprop (Tribunal Case E101 of 2022)
[2024] KEBPRT 1541 (KLR) (18 October 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1541 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E101 OF 2022
P MAY, MEMBER
OCTOBER 18, 2024**

BETWEEN

DANIEL KANDAGOR CHEPYEGON LANDLORD

AND

JOHN KIGEN KIPROP TENANT

JUDGMENT

1. The landlord commenced the present proceedings vide the reference dated 12th September, 2022 where he principally sought for eviction orders against the tenant. The landlord stated in the reference that the tenant had been adamant in leaving the demised premises despite the numerous agreements for him to exit and the notices of termination issued. He therefore sought for the intervention by the Tribunal to have the tenant vacate the premises.
2. The Tribunal had to dispense with the interlocutory applications that were filed in the matter before the reference could be heard. The parties filed their statements and documents before the hearing which proceeded on diverse dates between 8/5/2024 and 29/7/2024. I will proceed to summarize the testimony tendered by each party.

Summary of the landlord's case

3. It was the landlord's testimony that he entered into a lease agreement with the tenant for a period of six months in May, 2020. Upon the lapse of the term of the said tenancy, the tenant continued to be in occupation of the premises with agreed rent payable being Kes. 14,000/-. He stated that he gave the tenant notice to vacate the premises on 25th March, 2022 but the tenant opposed the same as it only gave the notice period to be one month.
4. The landlord stated that he proceeded to serve the tenant with a separate notice dated 7th June, 2022 under section 4(2) of CAP 301 and which the tenant responded by stating that they were adamant to vacate the premises unless the Tribunal made a determination. In his submissions the landlord



maintained that the notice issued was valid and urged the Tribunal had to uphold the same. In cross examination he stated that he had submitted application to the county to carry out renovations on the demised premises.

Summary of the tenant's case

5. The tenant in his testimony confirmed that he was in occupation of the demised premises where he operated a shop. He stated that the shop was his source of livelihood. It was his testimony that he had always paid rent as when it fell due and in instances where he delayed to pay rent in time, he always informed the landlord. He stated that the landlord's assertion that he wished to use the demised premises were unfounded, untrue and a mere front to evict him from the premises.
6. The tenant therefore sought for the protection by the Tribunal against what he termed as whimsical desire and dictates by the landlord to evict him. In his testimony and submissions, the tenant maintained that the landlord had not proven that he indeed wanted to carry out renovations and use the premises for a period exceeding one year as stipulated under CAP 301. He therefore prayed that he be allowed to remain on the premises.

Analysis

7. The Landlord issued the Tenant with a Notice of termination of the tenancy dated 7th June 2022, pursuant to section 4(2) of the Landlord and Tenant (shops, Hotels and Catering Establishment) Act.
8. The position of the law on the issue of a termination notice is now settled. The Court in *Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited*, Civil Appeal No. 203 of 1994, stated that: -

“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.”

9. It is evident that the notice of termination of the tenancy herein was in Form A as prescribed by the Act. further, the notice of termination of the tenancy was to take effect on 1st September ,2022, being a period exceeding two months as required by the Act.
10. Having established that the notice of termination of the tenancy was in the prescribed form, I shall proceed to analyze the substance of the notice with regard to the grounds of termination of the tenancy as follows:

Whether the Landlord has met the requirements of Section 7 (1) (f) of the Act?

11. Article 40 of *the Constitution* of Kenya 2010 guarantees the right of every person either individually or in association with others, to acquire and own property. This includes the right of a proprietor of land to enjoy and benefit from the use of such property and to deal with the property as they please within the confines of the Law.



12. Accordingly, Section 7 of the Act clearly stipulates the grounds upon which a Landlord may seek to terminate tenancy. One of the grounds as enshrined in Section 7 (f) of the Act is: -

7(f) that on the termination of the tenancy the Landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises.

13. The above provision affirms the right of the Landlord to undertake renovations and/or repairs to their property. According to the termination notice served upon the Tenant, the Landlord sought to terminate the tenancy on the ground “that on termination the landlord intends to do renovations and he wouldn’t be able to do so without obtaining vacant possession.”

14. In considering the threshold that should be met by a Landlord placing reliance on Section 7(1)(f) of the Act as a ground for termination of tenancy, the High Court in the case of; Auto Engineering Ltd Versus M. Gonella & Co. Ltd (1978) eKLR stated as follows: -

“...First, it is correct that the wording of section 7(1)(f) is “demolish or reconstruct”, and not merely to effect repairs. The distinction can of course be important; for while mere repairs may not necessarily mean that the landlord needs possession of the premises, an intended demolition or reconstruction of a substantial part of the premises would in all probability be frustrated if the landlord could not obtain possession, and that is why this provision exists.”

15. The Court went ahead to state as follows:

“For this purpose the Court must be satisfied that the intention to reconstruct is genuine and not colourable: 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. It must also be remembered that the Act is intended for the protection of shopkeepers, and that this protection would be nullified if a big concern could buy the property and get possession by putting in, say a new shop-front. Hence the necessity for the work being substantial.”

16. On this basis therefore, I find that the Landlord has not convinced this Honourable Court that the renovations to be conducted in the suit premises are substantial or extensive in nature to warrant vacant possession of the suit premises. The Landlord has therefore failed to meet the threshold of terminating a tenancy in accordance with Section 7 (1)(f) of the Act.

Whether the Landlord has met the requirements of Section 7 (1)(g) of the Act?



17. Section 7 (1)(g) of the Act allows for termination of tenancy on grounds that the Landlord intends to personally occupy the premises for a period of not less than one year. The provision specifically provides as follows:

7(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.

18. In order to succeed in a claim of vacant possession, this Honourable Tribunal must be satisfied that the Landlord himself intends to occupy the suit premises for a period of not less than one year. The criteria for determining the landlord's intention were dealt with in the case of; Auto Engineering Ltd Versus M. Gonella & Company Limited (1978) eKLR where the Court held:

“Apart from making a mere assertion that he intends to occupy the premises for a period of not less than one year the landlord's intention can be gauged from surrounding circumstances which lead a court to find on a balance of probabilities that the Landlord has established such an intention.”

19. Indeed, in finding that the Landlord had established a clear and settled intention to occupy the suit premises, the Environment and Land Court in the case of; Hashim Omar Hashim versus Alliance Nominee Limited [2020] eKLR stated as follows:

“...I do not think that in the instance of this case there is any doubt as to what business the landlord wishes to carry out, for it is clear that it is for short term rental. I am in the circumstances of this case, ready to infer that the landlord wishes to use the premises for more than one year, based partly on the reason that the landlord disclosed the nature of the business he intended to operate and the amount of money intended to be spent, which is Kshs. 20 – 30 Million. I do not think that one would use this amount of money on this premises in order to use it for a period of less than one year. I am satisfied, just as the Chairman of the Tribunal was, that there was a genuine reason given by the landlord for needing to have the premises to operate its own business. The notice given, which was six months, was also sufficient, and I think that it was now incumbent upon the appellant to seek alternative ways of operating his restaurant business without the bungalow in question.”

20. In the present dispute, the landlord apart from stating in the notice that they intended to use the premises, did not adduce any evidence in support of this ground. I am not satisfied in the present case that the landlord has been able to discharge his burden of proof that he intends to occupy the suit premises for own business. The notice is thus a candidate for dismissal for that reason.
21. In the end, the notice of termination dated 7th June, 2022 and the subsequent reference filed 12th September, 2022 are dismissed in their entirety.
22. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF OCTOBER, 2024.

HON. PATRICIA MAY

MEMBER



BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Kiptoo Landlord, in the absence of the Tenant.

