



**Wambua v Mutua & another (Tribunal Case E132 of 2024)
[2024] KEBPRT 1227 (KLR) (27 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1227 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E132 OF 2024
A MUMA, MEMBER
AUGUST 27, 2024**

BETWEEN

ANTHONY WAMBUA APPLICANT

AND

PATRICK MUTUA 1ST RESPONDENT

SUSAN WANGECI 2ND RESPONDENT

RULING

A. Parties And Representatives

1. The Applicant, Anthony Wambua is an occupant in the business premises within Likoni in Mombasa County the suit property (hence the tenant).
2. The Respondents, are the owners of the suit property located at Likoni in Mombasa County (hence the Landlords).
3. Kayata Advocate, is on record for the landlords.

B. Background Of The Dispute

4. The Tenant moved this tribunal vide a Reference and Notice of Motion Application dated 21st May 2024 seeking for; the application to be certified urgent, that pending inter-partes hearing, the Landlords/Respondents by himself, agents be hereby restrained from unlawfully evicting, victimizing ,threatening, intimidation or any other way whatsoever interfering with the applicant's/ tenant's quiet possession and use of the premises, that the verbal termination notice to terminate issued by the landlords be declared defective fatally flawed, misconceived and bad in law, that the landlords be temporarily restrained and prohibited from disturbing the quiet enjoyment of the business, that the landlords be temporarily restrained from disturbing the tenants quiet enjoyment of the business, that



the Landlord be ordered to refund the KShs.62,575 used by the Tenant in renovations and that the OCS Likoni Police Station to assist in compliance of the orders.

5. The Tribunal issued orders dated 27th May 2024 allowing prayer 2 of the Tenant's application that pending inter-partes hearing, the Landlords/Respondents by himself, agents be hereby restrained from unlawfully evicting, victimizing, threatening, intimidation or any other way whatsoever interfering with the applicant's/tenant's quiet possession and use of the premises.

C. The Tenant's Claim

6. The tenant claims that the Landlord issued a verbal notice to terminate on 27th May 2024.
7. It is therefore the Tenant's case that the Landlord's action to issue a verbal termination notice is illegal and hindering the running of his business.

D. List Of Issues For Determination

8. I have carefully perused the material placed before this court by the parties and it is my considered opinion that the sole issue that falls for determination is:

Whether the verbal termination notice issued by the landlords is valid? And if the said Susan was indeed a landlord?

E. Analysis & Determination

Whether the termination notice issued by the landlords is valid and if Susan is indeed a landlord?

9. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (hereinafter 'the 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.

10. 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.”

11. Section 7 of the Act provides for the grounds within which Landlord is allowed to issue a termination notice and at subsection (f) 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—



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;

12. In this case, there is no Landlord/Tenant relationship between Susan and the Tenant and there is equally no evidence of payment receipts provided for the space being used by the Tenant which is on Susan's property.
13. Susan issued a verbal notice in relation to the space which was initially hers and only allowed partial usage when necessary to the Tenant, without pay. The Tenant therefore seems to have been trespassing and ought to stay on the portion leased between him and Patrick.
14. The tribunal notes that the Tenant has claimed Kshs.62,575 for the renovations he's done in the premises. There is however no documentation or evidence provided to support the claim therefore the tribunal is restrained on that basis in regards to determining the issue.

I. Orders

15. The upshot is that the Tenant's Reference and Application dated 7th February 2024 are dismissed in the following terms;
 - a. There is no Landlord/Tenant relationship between Susan and Anthony there is equally no evidence of payment receipts provided;
 - b. The Tenant is a trespasser and ought to keep to leased space between him and Patrick;
 - c. No orders as to costs.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 27TH DAY OF AUGUST 2024 IN THE ABSENCE OF THE PARTIES.

HON. A MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

