



**Sharif v Munyoki t/a Kauma Hardware (Tribunal Case E592 of 2024)  
[2024] KEBPRT 1224 (KLR) (29 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1224 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E592 OF 2024  
A MUMA, MEMBER  
AUGUST 29, 2024**

**BETWEEN**

**ADAN AHMED SHARIF ..... LANDLORD**

**AND**

**NICHODEMUS MUNYOKI T/A KAUMA HARDWARE ..... TENANT**

**RULING**

**A. Parties And Their Representatives**

1. The Landlord, Adan Sharif, (the “Landlord”) is the lawful owner of Shop 1 & 2 erected on Plot No. 330 Block of Volcano Association, Ardhi river, within Machakos County (the “suit premises”).
2. The Firm of Ibrahim, Issack & Company Advocates represents the Tenant in this matter.
3. The Tenant, Charles Nichodemus (the “Tenant”), is the tenant occupying the suit premises.
4. The firm of Mukami Njeru & Associates represents the Landlord in this matter.

**B. Background Of The Dispute**

5. Through a Reference and an Application dated 23<sup>rd</sup> May 2024 canvassed through Certificate of Urgency of even date, the Landlord moved this Honourable Tribunal seeking the following orders inter-alia: orders certifying the matter as urgent, evicting the Tenant from the suit premises and compelling the Tenant to clear all outstanding liabilities on their account in respect of electricity, water, generator fuel and maintenance in the sum of KShs. 20,000.00.
6. Upon perusal of the Application, this Honourable Tribunal on 28<sup>th</sup> May 2024 directed that the Landlord to serve the Application and Reference for hearing on 24<sup>th</sup> June 2024 and subsequently file an affidavit of service.
7. In response to the Tenant’s Application, the Tenant filed a Replying Affidavit dated 11<sup>th</sup> July 2024.



8. The Landlord filed submissions in support of his Reference and Application dated 19<sup>th</sup> July 2024 and the Tenant subsequently filed his submissions dated 2<sup>nd</sup> August 2024.
9. It is the Landlord's Reference and Application dated 23<sup>rd</sup> May 2024 that is the subject of this ruling.

### **C. Landlords's Case**

10. The Landlord avers that he served the Tenant with a notice to vacate dated 15<sup>th</sup> April 2024 on the basis that the Tenant was making irregular rent payments which had led him to be in arrears of KShs. 20,000.00.
11. Further, the Landlord submits that the Tenant had continuously breached other terms of the tenancy

### **D. Tenant's Case**

12. The Tenant avers that the Landlord's notice to vacate does not comply with the requirements espoused under Section 4(2) of Cap 301 and is therefore invalid.
13. It is the Tenant's case that the Landlord intends to let the suit premises to another tenant and has attached correspondence to that effect.

### **E. Jurisdiction**

14. The Jurisdiction of this Honourable Tribunal is not contested by either party and therefore is not in dispute.

### **F. Issues For Determination**

15. Having carefully perused the Pleadings presented before this Honourable Tribunal by the parties, it is therefore my respectful finding that the sole issue that falls for determination is;

Whether the orders sought by the Landlord should be granted

### **G. Analysis And Determination**

16. The powers of the Business Premises Rent Tribunal are provided by the Landlord and Tenant Shops Hotels and Catering Establishments Act, Cap 301 Laws of Kenya (hereinafter the Act). Section 12(1) (i) of the Act provides that:
  4. "In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit."
17. This Tribunal notes the parties herein entered into an oral tenancy agreement which amounts to a controlled tenancy that is subject to the jurisdiction of this Honorable Court and whose termination should be in compliance with Section 4 (2) of Cap 301 which provides:

"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."



18. Further, Section 4 (4) of Cap 301 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:

Provided that—

- 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;
19. I have perused the notice of termination dated 15<sup>th</sup> April 2024 issued by the Landlord. I note that the notice lacks form as the same is a letter as opposed to the prescribed form under Cap 301.
20. Additionally, the notice lacks substance for the reasons that; it provides for a termination period of 28 days as opposed to the two months’ notice period and it does not require the Tenant to respond in writing indicating whether or not he is willing to comply with the notice. convinced that the same falls short of the requirements of Section 4 of Cap 301.
21. In the circumstances, I find that the notice of termination dated 15<sup>th</sup> April 2024 falls short of the requirements for termination of a controlled tenancy under Section 4 and hence, is invalid.
22. Be that as it may, I note that the Tenant has been making irregular rent payments and has not paid rent for several months as per the Landlord’s Mpesa statements dated 6<sup>th</sup> May 2024 accumulating arrears in the sum of KShs. 40,000.00. It is an implied term of every tenancy that the Tenant pays rent as agreed by the parties to the tenancy.

#### **F. Orders**

23. In the upshot the Landlord’s Reference and Application dated 23<sup>rd</sup> May 2024 are hereby partially allowed in the following terms;
- a. The Tenant to clear any outstanding arrears within 14 days failure to which the Landlord shall be at liberty to distress for rent;
  - b. The tenant to pay rent on or before the 10<sup>th</sup> of every month without fail, failure to which the Landlord will be at liberty to distress and take back vacant possession with the Assistance of OCS Athiriver police station.
  - c. The Landlord is at liberty to issue a fresh notice; and
  - d. Each party to bear their own costs.

**HON A. MUMA - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 29<sup>TH</sup> DAY OF AUGUST 2024 IN THE PRESENCE OF NAMUDE FOR LANDLORD AND SIMIYU HOLDING BRIEF FOR MUKAMI FOR THE TENANT.**

