



**Kamau v Kamande (Tribunal Case E1166 of 2023)
[2024] KEBPRT 697 (KLR) (17 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 697 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1166 OF 2023
N WAHOME, MEMBER
APRIL 17, 2024**

BETWEEN

NELLY WANENE KAMAU APPLICANT

AND

DAVID IRUNGU KAMANDE RESPONDENT

RULING

1. By a Reference dated the 24.11.2023, the Applicant/Landlady grieved that;
 - a. The Tenant one David Irungu Kamau was served with a notice to terminate the tenancy, under Section 4(2) of the Landlord and Tenant (Shops, Hotels and Catering Establishments Act Cap (Cap 301) “hereinafter the Act” dated 30.8.2023 on even date.
 - b. The notice period was for two (2) months with the tenancy terminating with effect from 1st November, 2023.
 - c. The notice period has since lapsed and the Tenant has refused and/or refused (sic) to vacate the premises nor has he filed a Reference at this Honourable Tribunal.
 - d. The premises is due for demolition by the end of the year but the same is impossible as the Tenant is still in possession of the premises.
2. The Applicant/Landlady therefore prayed for;

“This Honourable Tribunal do order the Tenant to vacate and handover vacant possession of the premises to the Landlady.”



3. The notice referred to by the Applicant and which was inexplicably not annexed to her Application dated 24.11.2023 is the one annexed as an exhibit by the Respondent in his Replying affidavit. It is dated 30.8.2023. The same reads as follows:-

“I, Nelly Wanene Kamau, the registered proprietor of all that property known as Dagoretti/Thogoto/03664, Thogoto area, Kikuyu, and of P.O. Box 48-00902, Kikuyu, the Landlord of the above mentioned premises, hereby give you notice terminating your tenancy with effect from the 1st day of September, 2023.”

4. Accompanying the Reference is the notice of motion Application dated 24.11.2023. It rehearsed the prayer in the Reference to the effect that:-

“this Honourable Tribunal do order the Tenant/Respondent to vacate and handover vacant possession immediately of the premises known as Makuti-Inn erected on Title No. Dagoretti/Thogoto/3834 to the Landlady/Applicant.”

5. The main contention of the landlady was that:-

- i. The Respondent had not objected to the termination notice at the expiry of sixty (60) days and the same had taken effect on the 1.11.2022.
- ii. She was required to demolish the demised premises as it was sitting on an access road and also wanted to renovate the same for her own use.
- iii. It was not possible to effect what was demanded of her without the Respondent delivering vacant possession.
- iv. There were threats of law suits in the event that she never carried out the demolitions.

6. On his part, the Respondent, filed the Replying affidavit sworn on the 15.1.2024 and the further affidavit sworn on the 29.2.2024. His case is that:-

- i. The notice of termination is defective as it is not compliant with Section 4(2) of the Act.
- ii. Denied that the Applicant was required to demolish the premises and that the same was a disguise by her to evict him and install a new Tenant at a higher rent.
- iii. There was no evidence of any approved plans for the purported renovations.

7. I have perused the Applicants further Affidavit and the parties submissions for the Applicant and the Respondent dated 28.3.2024 and 29.2.2024 respectively and from the totality of all the materials placed before me, my view is that the issues for determination in this matter are the following:-

A: Whether the Notice of Termination of tenancy dated 30.8.2023 is lawful.

B: Who should bear the costs of the suit.

Issue No. A: Whether the Notice of Termination of tenancy dated 30.8.2023 is lawful

8. The Termination Notice dated 30.8.2023 refers to a property known as Dagoretti/Thogoto/03664 whereas the reliefs in the Reference and notice of motion Application dated 24.11.2023 relates to title No. Dagoretti/Thogoto/3438. This would likely be fatal to the Applicant’s case in view of the provisions of Regulation 11(1) and Regulation 4(2) of the Regulations to the Act on the mandatory requirement to invoke the citation of the subject matter premises.



9. I would however in view of Article 159(2)(d) exclude the error for the reasons that no party has complained of being prejudiced by the same in and pursuit of doing substantial justice to the parties.
10. However, I find that the Termination Notice did not comply with a fundamental and mandatory requirement of the law. The notice given was for only one (1) clear day before the expected delivery of vacant possession on the 1.9.2023.

Section 4(4) of the Act 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.”

11. This issue was extensively considered in a situation similar to the obtaining matter in the case of; Fredrick Mutua Mulinge t/a Kitui Uniforms vs Kitui Teachers Housing Co-operative Society Ltd [2017] eKLR, where the court held that;-

“It is clear from the foregoing authorities that the Tenancy notice dated 28.6.2017 was null and void for failing to give the Appellant two months notice as required under the Act and as such, was of no legal effect. Life could not be breathed into the defective notice by the letter dated 1.7.2014 through which the Respondents purported to amend the effective date of the notice. The letter was not a notice in the prescribed form provided for in the Act.”

12. The Applicant also founded the Termination notice on a requirement by undisclosed third parties to demolish the premises to create a road of access. No maps nor any indication howsoever remote, were availed to demonstrate that there was such a requirement on her. In any event, such a ground is alien and unknown to the Act.

13. On the notice of termination itself, the Applicant had stated that she;-

“Wished to take possession of the premises and reconstruct and remodel a substantial part of the premises to make it favourable and fit for the business I intend to establish for myself on the premises.”

14. Section 7(1)(g) on which the Applicant had sought reliance on provides that;-

“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.”

15. From the plain reading of the said Section, the least that would be expected from the Applicant is that she needed to use the premises for at least a year, avail plans for the renovations to be undertaken and information or sources of finances for such renovations and business to be established. Sadly, the Applicant did not even disclose the kind or type of business that she wanted to run at the premises.
16. The courts have on several occasions and instances rendered themselves on the requirements or pre-requisites for the ground provided under Section 7(1)(g) of the Act to succeed.



17. In the case of; Auto Engineering Ltd vs M. Gonella & Company Limited [1979] eKLR, the court held that:-

“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.”

18. The court in the case of; Hashim Omar Hashim vs Alliance Nominee Ltd (2020) eKLR, the court rendered itself thus;-

“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 it is not for a 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.”

19. Finally in the case of; Embu Gateru Housing Co-operative Society Ltd vs George Thuo T/a Paramount Café & 2 Others [2021] eKLR, the court held that:-

“Courts have particularly been keen to ensure that landlords do not kick out tenants on the pretext that they are going to carry out major repairs or demolish the premises or even take use of the same (emphasis mine) only for them to put in new tenants at higher rents.”

20. I would therefore conclude and determine that the Application dated 24.11.2024 and the Reference thereof of even date have no merit and declare them as lacking in any merit and unlawful.

Issue No. B: Who should bear the costs of this suit

21. I do not see any compelling reason nor justification to depart from the wisdom of Section 27 of the [Civil Procedure Act](#) and I would therefore award costs to the Respondent/Tenant

22. In the final analysis, the Reference herein and the Application have failed and I proceed to make the following orders;-

- a. That the notice of termination of tenancy dated 30.8.2023 is unlawful and of no legal effect nor consequence.
- b. That the notice of motion Application and the Reference thereof both dated 24.11.2023 are dismissed.
- c. That the Tenant/Respondent shall enjoy quiet possession of title No. Dagoretti/Thogoro/3834 unless otherwise disturbed in strict compliance with the Act
- d. That the Tenant/Respondent is awarded costs assessed at Kshs. 30,000/= to be offset from the rent payable to the Applicant.

Those are the orders of the court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF APRIL, 2024.

HON. NDEGWA WAHOME, MBS



MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of;

Mr. Kamau for the Tenant/Applicant

M/S Ambuga holding brief for Mr. Ng'ang'a for the Landlady

Further order

Parties may be supplied with copies of the Ruling on payment of the requisite court fees.

