



**Alason v Maina (Tribunal Case E725 of 2022)
[2023] KEBPRT 10 (KLR) (20 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 10 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E725 OF 2022
A MUMA, VICE CHAIR
JANUARY 20, 2023**

BETWEEN

ABDUL ALASON TENANT

AND

KIMANI MAINA LANDLORD

RULING

A. Parties and Representatives

1. The Applicant Abdul Alason is the Tenant and had rented space on the Suit Property known as Maina Building shop number 4 in Eastleigh for the business. (hereinafter known as the ‘tenant’)
2. The firm of Ondieki A Hashi & Company Advocates represent the Tenant/Applicant in this matter. (info@oah.co.ke)
3. The Respondent Kimani Maina is the Landlord and rented out space for the business in the suit property to the Tenant. (hereinafter the ‘landlord’)
4. The Respondents appear in person in this matter.

B. The Dispute Background

5. The Landlord allegedly issued the Tenant with a Notice to terminate Tenancy dated May 6, 2022 which was to take effect on July 6, 2022. The Notice was issued on the grounds that the Tenant had converted the business from what was initially agreed between the parties as well as that the Tenant was in arrears.
6. In addition, the Landlord has filed a Reference and a Notice of Motion application dated September 21, 2022 under section 12 (4) of the [Landlords and Tenants \(Shops, Hotels and Catering\) Establishments Act](#) Cap 301. The Landlord was seeking that this Honourable Tribunal grants orders



requiring that the Tenant pay rent of Kshs 40,000 owed to him as well as that the Landlord be allowed to evict the Tenant as per the Termination Notice issued.

C. The Landlord's Claim

7. The tenant filed a Reference and a Notice of Motion Application dated September 21, 2022 to which the Landlord got orders requiring that the Tenant pay rent being Kshs 40,000 as well as the pending utility bills.

D. The Tenant's Claim

8. The Tenant has filed a Replying Affidavit dated October 3, 2022.
9. The Tenant has also filed Grounds of Opposition dated October 3, 2022
10. The Landlord has filed submissions and the matter was fixed for Ruling on December 21, 2022.

E. List of Issues For Determination

11. It is the contention of this Tribunal that the issues raised for determination are as follows;
 - I. Whether the termination of the Tenancy by the Landlord was valid?

F. Analysis and Findings

Whether the termination of the tenancy by the landlord was valid?

12. Section 4(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya provides that;

"4(2) 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.

4(4) No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party"

13. The above provision requires that before the Landlord can terminate or alter the terms of a controlled tenancy, they must issue a notice of not less than two months to the Tenant.
14. In the present case the Tenant has averred that they were issued by the Landlord with a Notice to terminate tenancy dated July 27, 2022. Having perused the annexed notice it is difficult for the Tribunal to establish whether the said Notice was valid since only half of the Notice is visible. As such the Court cannot tell whether the same adheres to the requirements of cap 301.
15. I have also observed that the Tenant has not filed a Reference opposing the Notice, as a result the Notice remains unopposed. The Tenant has also not filed an application seeking extension of time within which to file the Reference.
16. The Landlord has also averred that the Tenant is in arrears which is the main reason that they intended to terminate the tenancy. They have however not provided any proof before the Tribunal to prove the arrears.



G.Orders

- a. The upshot is that the Landlord shall avail the alleged Notice to terminate tenancy before the Tribunal within 14 days and serve the Tenant together with reasons and statement of accounts.
- b. The tenant shall have 14 days to file and serve a reference to oppose the said notice together with an affidavit and statement of accounts.
- c. The reference shall be fixed for hearing on February 24, 2023
- d. Costs shall be in the Cause.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 20TH DAY OF JANUARY 2023 IN THE ABSENCE OF PARTIES.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

