



**Nyakundi v Mutimba (Tribunal Case E036 of 2024)
[2024] KEBPRT 861 (KLR) (18 June 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 861 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E036 OF 2024
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
JUNE 18, 2024
VIEW PARK TOWERS 7TH & 8TH FLOOR**

BETWEEN

EDWIN NYAKUNDI APPLICANT

AND

RASID MUTIMBA RESPONDENT

JUDGMENT

1. The Tenant/Applicant originated these proceedings by his reference dated 27th February 2024. The same was said to be founded on Section 12(4) of the [landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) (Cap. 301) hereinafter the Act. The Tenant prayed that:-

“The Tribunal to investigate the matter and determine the issue involved”.
2. The reference was triggered by the notice of termination of tenancy dated 4th December 2023. The same was to face effect on the 1st March 2024. The termination notice was founded on the following grievance:-

“The Tenant has refused to pay rent. He has a rent arrears of Kshs.16,000/-. Effort to recover the arrears has failed. I request the Rent Tribunal Court and OCS Bungoma Police Station to order the Tenant to pay all rent arrears and vacate the Business Premises”.
3. The Tenant further filed the Replying Affidavit dated 1st March 2024 and the supplementary Affidavit dated 11th April 2024. He also filed submissions to fortify his case. On his part, the Landlord also filed two Affidavits dated 29th February 2024 and 17th April 2024. He also filed submissions in support of his case.



4. We have perused all the pleadings, document and submission in support of the parties respective cases. In our view, the issues for determination in this matter are the following:-
- A. Whether the Landlord's notice of increment of rent was lawful,
 - B. Whether the landlord's notice of termination of the Tenant was lawful.
 - C. Who should bear the costs of this suit.

Issue No. A Whether the landlord's notice of increment of Rent was lawful.

5. It is not in dispute that the purported notice of increment of rent is the one dated 3rd April 2024. That was a duration of 28 days. The rent was to graduate from Kshs.6,000/- to Kshs.8,000/-. The other purported notice of increment of rent is the Tenant's annexure no. "EN 01". The rent was to increase from Kshs.8,000/- to Kshs.10,000/-. The notice was issued through a text message by phone dated 1st May 2023 and same was to take effect immediately.
6. In our construed view, these notices was not compliant with the law and were therefore of no effect nor consequence. Section 4(2) of the Act 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 tenancy, shall give notice in that behalf to the tenant in the prescribed form”.
7. The prescribed form alluded to by Section 4(2) of the Act is provided for by Regulation 4(1) of the Regulations to the Act. The same provides that:-
- “A notice under Section 4(2) of the Act by a Landlord shall be in form A in the schedule to these Regulations to the Act. The same provides that:-
- “A notice under Section 4(2) of the Act by a landlord shall be in form A I the schedule to these Regulations”
8. From the materials placed before us, there is no evidence that the purported notice to increase rent was in compliant with the law. It is our finding and determination that the entire process neither embraced nor was recognized by the law. In these we also rely on the determination in the Locus Classicus case of Fredrick Mutua Mulinge T/A Kitui Uniform – 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 28th June 2014 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.....The letter was not in the prescribed form provided for under the Act”.
9. The upshot of all that is that the notice of increment of rent dated 3rd April 2024 did not comply with Sections 4(2), 4(4) and 7 of the Act and Regulation 4(1) of the Regulations and therefore the rent payable on the demised premises by the Tenant is Kshs.6,000/- only.

Issue No. B- Whether the notice of Termination is lawful

10. The notice of termination of tenancy is one ground only. That the tenant is in arrears of the increased rent at Kshs.2,000/- per month for 8 months between May, 2023 and March 2024 when the Notice



of termination was lodged. This court has already determined that the rent payable on the demised premises is Kshs.6,000/- and that the purported rent increment was unlawful and of no legal effect.

11. The parties are in agreement that the Tenant is upto date on rent payment at the rate of Kshs.6,000/- per month. The effect of this is that the tenant was not in any rent arrears at the time the termination notice dated 4th December 2023 was issued or even at the time the parties appeared in court.
12. Therefore Section 7(1) (b) of the Act which has been relied upon by the Landlord in his notice is not available to him. The same provides that”

“that the Tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable”.

It is our view then that the notice of termination dated 4th December 2023 is without merit nor basis in law and the same is declared as illegal and of no legal effect nor consequence.

Issue No. C – Who should bear the costs of this suit.

13. The proviso to Section 27 of the Civil Procedure Act provides that:-

“Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order”.

In this matter, we have no cause nor justification to award the Tenant the costs of the reference.

14. We have also noted that May issues have been raised in this matter. including compensation for spoilt maize, some landscaping done and also some paint work undertaken. It is our view that though the same may be relevant to the parties, they were not issues for determination before this court. We were only called upon to judge on the legality of the purported rent increment and termination and we have unequivocally delivered ourselves on the twin issues.
15. In the final analysis, we make the following orders;
 - i. That the notice of increment of rent dated 3rd April 2023 and the notice of termination of tenancy dated 4th December 2023 and the notice of termination of tenancy dated 4th December 2023 are declared illegal and of no legal effect nor consequence.
 - ii. That the Tenant’s reference is allowed in that he shall be allowed quiet possession of the demised premises.
 - iii. That the landlord shall pay costs to the Tenant assessed at Kshs.10,000/- to be offset from rent payable to him.

Those are the orders of the court.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF JUNE 2024.

HON. NDEGWA WAHOME - PANEL CHAIRPERSON

HON. JOYCE MURIGI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL BPRT

18th JUNE, 2024

