



Nassor & another v Waleghwa t/a Telle Zafanana Estate & another (Tribunal Case E208 of 2023) [2024] KEBPRT 473 (KLR) (Commercial and Tax) (12 April 2024) (Ruling)

Neutral citation: [2024] KEBPRT 473 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
COMMERCIAL AND TAX
TRIBUNAL CASE E208 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
APRIL 12, 2024**

BETWEEN

SAGAFF ABDALLA NASSOR 1ST APPLICANT

ABDALLA NASSOR 2ND APPLICANT

AND

RHODA WALEGHWA T/A TELLE ZAFANANA ESTATE 1ST RESPONDENT

VINCENT MWAKIO 2ND RESPONDENT

RULING

A. Dispute Background

1. The tenant moved this tribunal vide a reference under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301, dated 24th August, 2023 with a complaint that the landlord/respondent intended to forcefully evict them from the suit premises, illegally increase rent from the current rent of KES. 6,000 to KES. 12,000 and threatened to disrupt the business if the tenants did not comply with the unlawful notices.
2. The tenants filed a Notice of Motion under a Certificate of Urgency dated 24th August, 2023 in which they sought the following orders; -
 - i. That the application be certified urgent.
 - ii. That pending hearing inter-partes, the landlord/respondent be restrained from unlawfully evicting, harassing or in any way interfering with the tenants' quiet possession and use of the premises and either the OCS Kilifi Station or the Area Chief to ensure compliance.



- iii. That this tribunal investigates and issue a restraining order against the landlord or his agents from enforcing the illegal notice of termination of tenancy and illegal notice of Increase of rent issued to the tenants pending hearing and final determination of the complaint.
 - iv. That the costs of the reference be borne by the respondent/landlord.
3. The 2nd tenant/applicant filed a supporting affidavit of even date in which he deposes as follows; -
- i. That he rented the premises herein over a decade ago where he operates a butchery and has been paying rent of KES. 6,000 per month and has no rent arrears.
 - ii. That the landlord/respondent intended to evict the tenant vide a 1-month notice issued on 5th September, 2023 contrary to Cap 301 Laws of Kenya. A copy of the said Notice to terminate tenancy is attached.
 - iii. That the landlord/respondent also issued an illegal notice to increase rent from the current KES. 6,000 to KES. 12,000 contrary to Cap 301 Laws of Kenya. A copy of the said Notice to increase is attached.
 - iv. That the landlord had threatened to disrupt the business if the tenant did not comply with the illegal notice to terminate tenancy.
 - v. That the actions of the landlord are in bad faith and are meant to cause the tenants herein anguish.
4. On 4th September, 2023, the court issued temporary orders of injunction against the landlord/respondent pending hearing inter-partes.
5. The application is opposed vide a replying affidavit dated 19th December, 2023 in which the respondent deposes as follows; -
- i. That the rent which the tenants are paying is not commensurate with the prevailing economic reality in the country and are against the dictates of the market forces.
 - ii. That the landlord issued a notice to increase the monthly rent from KES. 6,000 per month to KES. 12,000 per month which is not illegal and within his right as a landlord.
 - iii. That before the landlord let out the suit premises to the tenants herein, he used to run a butchery business and had the machines and other items which the tenants herein have been using.
 - iv. That since the tenants refused to pay the increased monthly rent, the landlord issued a notice to terminate the tenancy.
 - v. That the landlord has no intention to forcefully evict or disrupt the business.
6. The 2nd tenant/applicant filed a further affidavit dated 1st April, 2024 in which he deposes as follows; -
- i. That the respondent has admitted that they are increasing the monthly rent by 100% from KES. 6,000 to KES. 12,000 which is not supported by any valuation or other independent evidence to justify it.
 - ii. That the tenants/applicantve has since paid the outstanding rent in the sum of KES. 36,000 being rent for 6 months from September 2023 to January 2024. Copies of the receipts are annexed as "AN-1".



- iii. That the tenants are in the process of paying the rent for the months of February 2024 to April 2024 which the parties entered into an oral agreement with the 1st respondent that the tenants pay in installments until completion.
 - iv. That the tenants have enormously invested in the business premises such that it would be unfair to be evicted without any justification.
 - v. That the tenants have demonstrated that they are willing to pay the old rent of KES. 6,000 to the respondents without defaulting.
 - vi. That the tribunal allows the tenants to continue paying the old rent since times are hard.
7. At the court hearing on 27th September, 2023, the tribunal directed that the matter be disposed of by way of written submissions and both parties complied. The tenants filed theirs dated 1st April, 2024 and the respondents filed theirs dated 9th April, 2024. We shall consider both submissions as we deal with the issues for determination.

B. Issues for determination

8. The following are the issues for determination; -
- a. Whether the Notices to terminate tenancy and increase rent herein are valid and legal.
 - b. Whether the tenants are entitled to the orders sought in the application dated 24th August, 2023.
 - c. Who shall bear the costs of the application?

Issue (a) Whether the Notices to terminate tenancy and increase rent herein are valid and legal.

9. The landlord/respondent herein issued a notice to increase rent dated 25th July, 2023 which was due to take effect on 1st August, 2023 and subsequently issued another notice to vacate the suit premises dated 5th August, 2023 which was due to take effect on 5th September, 2023.
10. In the case of *Manaver N Alibhai t/a Diani Boutique v South Coast Fitness & Sports Centre Limited* Civil Appeal No. 203 of 1994 it was held as follows: -

“The Act lays down clearly 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. In view of the above, a termination of tenancy notice and/or a notice to alter the terms of tenancy (which in this case is increment of rent) ought to comply with the dictates of Section 4(2) of Cap 301.
12. We find that the notice to terminate tenancy dated 5th August, 2023 and the Notice to increase the monthly rent dated 25th July, 2023 issued herein are not in accordance with the Act and are therefore declared invalid and illegal.



Issue (b) Whether the tenants are entitled to the orders sought in the application dated 24th August, 2023.

13. The tenants/applicants approached this tribunal seeking orders of injunction against the landlord and his agents from evicting or increasing the monthly rent.
14. Following the above analysis where both notices issued to the tenants/applicants have been found defective, the tenants were entitled to approach this Tribunal for protection against threatened illegal eviction and increase of rent.
15. Having found that the Landlord/Respondent had not issued any proper notice to terminate tenancy or increase rent, we find that the tenants' application for orders of injunction is merited.

Issue (c). Who shall bear the costs of the application?

16. As regards costs, the same are in the Tribunal's discretion under Section 12(1)(k) of [Cap. 301](#), but always follow the event unless for good reasons otherwise ordered. We have no reason to deny costs of the application and reference to the tenants/applicants.

A. Orders

17. In conclusion, the following orders commend to us; -
 - a. The application dated 24th August, 2023 is hereby allowed as prayed.
 - b. The reference dated 24th August is settled in terms.
 - c. The landlord is at liberty to issue proper notices of termination and/or increment of rent according to Cap 301 Laws of Kenya.
 - d. The tenant shall continue to pay the monthly rent of KES. 6,000.
 - e. Costs of KES. 20,000 to the tenant to be offset against the rent account.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH APRIL, 2024

HON. JOYCE AKINYI OSODO - (PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE - (MEMBER)

In the presence of:

Muyala for Landlord/Respondent

No appearance for Tenants

