



**Joshua v Karwira (Tribunal Case E771 of 2023)
[2023] KEBPRT 692 (KLR) (Civ) (1 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 692 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E771 OF 2023
P KITUR, MEMBER
DECEMBER 1, 2023**

BETWEEN

NANCY NASIEKU JOSHUA APPLICANT

AND

MARTHA KARWIRA RESPONDENT

RULING

A. Parties and Representatives

1. The Applicant Nancy Nasieku Joshua is the Landlady and proprietor of the suit properties occupied by the Tenant, Paul Musyoki Maweu T/A Diphine Education Centre. (hereinafter known as the 'Landlord')
2. The Tenant is represented by M/s Mwae & Associates Advocates.
3. The Respondent Paul Musyoki Maweu is the Tenant and has rented out the suit property from the Landlady. (hereinafter known as the 'Tenant')
4. The firm of M/S Ombati Otieno Opondo & Awino Advocates represent the Tenant in this matter.

B. The Dispute Background

5. The Landlady Avers that she rented out fifteen (15) houses to the Tenant in which the tenant operates a business in the name and style of Diphine Education Center.
6. That the rental houses were in two phases, Phase one contained 7 houses at a monthly rent of 3,000/= payable annually in September and the second phase consisted of 8 houses at a monthly rent of 3,000/= payable every January.



7. That the Tenant owes the Landlord arrears in rent totaling to 683,000 accrued in the years 2018, 2022 and 2023. The Landlady provided a breakdown of the same in her witness statement dated 11th August 2023.
8. The Landlady further averred that despite writing to the Tenant several demand notices, and despite the Tenant's incessant promises to make good of his dues, he has failed to keep his word, despite being in occupation of the premises.
9. Apprehensive of the Tenant's actions, the Landlady filed a Notice of Motion Application under certificate, together with her witness statement dated 11th August 2023 seeking Interlalia;
 - I. That pending the hearing and determination of this application, this honorable court be pleased to issue an exparte order compelling the Respondent to forthwith and unconditionally pay the Applicant Kshs. 683,000/= being rent arrears since January 2018 to July 2023.
 - II. That pending the hearing and determination of this suit, this honorable court be pleased to issue an exparte order compelling the Respondent to forthwith and unconditionally pay the Applicant Kshs. 683,000/= being rent arrears since January 2018 to July 2023.
 - III. In default of the two sought above, this Honourable Tribunal be pleased to issue an order compelling the Respondent to forthwith deliver vacant possession or in the alternative eviction orders to issue against the Respondent, his servants, employees, agents pending the earing and determination of this suit.
10. On the other hand, the Tenant filed a Notice of Preliminary Objection dated 22nd September 2023 challenging the Landlord's Application on the ground that;
 - a. No notice of termination of the tenancy was served upon the Tenant to warrant a termination of the tenancy and consequently the eviction prayed.
11. The Tenant relied on the provisions of Cap 301 which lays out the procedures for the termination of a tenancy agreement.
12. I have considered the Landlords Application, the Tenants Notice of Motion Application and the Subsequent submissions and wish to make a determination as hereunder.

C. List Of Issues for Determination

13. The main issue for determination is as follows;
 - a. Whether the Preliminary Objection herein is merited.

D. Analysis and Findings

Whether the Preliminary Objection herein is merited

14. The Landlady filed a Notice of Motion Application dated 11th August 2023 seeking orders to compel the Tenant to pay a sum of 683,000/= being rent arrears, in default of which, an order to compel the Tenant to grant her vacant possession, or otherwise for eviction orders to issue.
15. The tenant filed a Notice of Preliminary dated 22nd September 2023 challenging the merits of the Landlady's Application on the grounds that no notice of termination was served upon the Tenant in this matter.



16. The Tenant further submitted that the actions of the Landlady, in filing the suit herein, contravene the provisions of [Cap 301](#) and in particular, he relied on section 4 (1), 4(2) and 6(1) of [Cap 301](#).
17. The principles established by the time-honored, *Mukisa Biscuit Manufacturing Co Ltd v. West End Distributors* (1969) EA 696, are settled that;

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

18. I am inclined to agree with the Tenant to the extent that Section 4 of Cap 301 of the of the [Landlord and Tenant \(shops, Hotels and Catering Establishment\) Act](#) is the Principal Act governing termination notices in Landlord-Tenant relationship.

19. Sections 4 (1) and (2) state thus:

(4) Termination of, and alteration of terms and conditions in, controlled tenancy

(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall 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 the following provisions of this Act.

(2) 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

20. In view of the foregoing, I have considered that the Landlady did not follow due process in seeking termination of the Tenancy herein.
21. I have also considered that Landlady is also seeking orders to compel the Tenant to forthwith and unconditionally pay the Landlady Kshs. 683,000/= being rent arrears since January 2018 to July 2023.
22. I have perused the file and I take note that the landlady did not file a Complaint or a Reference to this court together with the Notice of Motion Application.
23. It is my considered view that failure to file a Complaint or a Reference goes into the root of the matter and is fatal to the landlady's case.
24. In *Lall – vs- Jeypee Investments Ltd* (1972) EA 512 it was held as follows:-

“The Landlord and Tenant (Shops, Hotels and Catering Establishments) Act is an especially enacted piece of legislation which creates a privileged class of tenants for the purpose of affording them the protection specified by its provisions against ravages of predatory landlords. Such protection can only be fully enjoyed if the provisions of Act are observed to the latter otherwise the clearly indicated intention of the legislature would be defeated. In order to be effective in this fashion, the Act must be construed strictly no matter how harsh



the result..... The Landlord and Tenant Act laid down a code which parliament intended to be followed and if a landlord does not give notice of termination as prescribed, the notice will be ineffectual. This may seem a technical and unmeritorious defence, but there is no doubt that the court has no power to dispense with these time limits if the defendant chooses to object at the proper time. This is an Act which requires, in so far as the giving of the notice is concerned absolute and complete not merely substantive compliance with its peremptory provisions”.

25. The Landlady filed the application without filing any Reference which is akin to filing an application under the [Civil Procedure Rules](#) without filing a plaint. The application therefore lacks a foundation making it incompetent and liable to be struck out.

E. Orders

26. I therefore proceed to order as follows:
- a. The upshot is that the Tenant’s Preliminary Objection succeeds in the following terms;
 - b. The Landlady’s Application dated 11th August 2023 is hereby struck out.
 - c. The Landlady is at liberty to issue a proper notice upon the Tenant if she so desires.
 - d. Each party shall bear their own Costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR THIS 1ST DAY OF DECEMBER 2023 IN THE ABSENCE OF THE PARTIES.

HON P. KITUR MEMBER

BUSINESS PREMISES RENT TRIBUNAL

