



**Ndirangu v Ong'ondo (Tribunal Case E802 of 2022)
[2023] KEBPRT 9 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 9 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E802 OF 2022
A MUMA, VICE CHAIR
JANUARY 19, 2023**

BETWEEN

RACHAEL WAKONYO NDIRANGU LANDLORD

AND

ISAAC ONG'ONDO RESPONDENT

RULING

A. Parties and Representatives

1. The applicants Rachael Wakonyo Ndirangu is the Landlord and had rented out space on the Suit Property located at Santon Kasarani for the business. (hereinafter known as the 'Landlord')
2. The firm of E.S Ochieng & Co. Advocates represent the Landlord/Applicant in this matter.
3. The respondent Isaac Ong'ondo is the Tenant and rented space for the business in the suit property. (hereinafter the 'tenant')
4. The firm of Jaden Jonathan & Mwambi Advocates represent the Tenant/Respondent in this matter.

B. The Dispute Background

5. The Landlord issued the Tenant with a Notice to terminate Tenancy dated June 15, 2022 which was to take effect on September 1, 2022. The Notice was issued on the grounds that the Tenant had failed to comply with the terms of the Tenancy and that the Landlord wished to use the premises for their own use.

C. The Landlord's Claim

6. The Landlord filed a Reference and a Notice of Motion Application dated September 6, 2022 seeking that the tenant be compelled to vacate the premises.



D. The Tenant's Claim

7. The Tenant has filed a replying affidavit dated October 13, 2022.

E. List of Issues For Determination

8. It is the contention of this Tribunal that the issues raised for determination are as follows;

I. Whether the Termination Notice Issued by the Landlord was valid?

F. Analysis and Findings

Whether the Termination Notice Issued by the Landlord was valid?

9. 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
10. 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.
11. In the present case, the Landlord issued the Tenant with a Notice to terminate tenancy dated June 15, 2022 and the same was to take effect on September 1, 2022. According to the provisions of cap301 above, the said notice is deemed to be valid since it accorded the Tenant the required two months period.
12. Section 4(5) of cap301 requires that upon receipt of a Notice the receiving party is expected to respond and inform the Landlord of their intention of lack thereof to comply with the Notice. The Latter is done through filing of a Reference before this Tribunal to oppose the issued Notice. In this case, the Tenant did not file a Reference before this Tribunal neither have they filed an application seeking to extend time or file the Reference out of time. As a result, the Notice remains unopposed.
13. In their replying affidavit, the Tenant avers that the allegations made by the Landlady are unwarranted and that there are similar businesses around the area. Additionally, they allege that they have made investments in the premises worth 3,000,000.
14. The tenant does address lack of service neither does he offer any explanation leading to the delay in opposing the said notice within the prescribed time the affidavit of one Isaac Nyamweya Ong'ondo gets into the merits of the reasons to evict which the tribunal can only explore if satisfied that the Notice was opposed and reference duly filed to oppose the same as we speak not it is not.
15. Seeing as the same is valid, the contention of this Tribunal is to uphold its validity and require that the Tenant grant the Landlord vacant possession of the premises.

G. Orders

- a. The upshot is that the Landlord's Reference and Application dated September 6, 2022 is hereby allowed in the following terms;



- b. The Tenant shall hand over Vacant Possession of the premises to the Landlord on or before January 31, 2022 failure to which the Landlord shall be at liberty to break in and take over vacant possession of the suit premises.
- c. OCS Kasarani Police Station to assist in compliance.
- d. Each party shall bear their own Costs.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by **Hon A. Muma** this **19th** Day of **January 2023** In the presence of **Mwambi** for the Tenant and **Opiyo** for the Landlord.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

