



**Yusuf t/a Ibrahim's Cafe v Bux (Tribunal Case E233 of 2023)
[2023] KEBPRT 1311 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1311 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E233 OF 2023
P MAY, MEMBER
NOVEMBER 30, 2023**

BETWEEN

SAIDA IBRAHIM YUSUF T/A IBRAHIM'S CAFE APPLICANT

AND

JABIN A BUX RESPONDENT

RULING

1. The application before me is the tenant's notice of motion brought under certificate dated 14th September, 2023. The tenant sought a plethora of orders against the landlord whom he accused of acting in total disregard of the law.
2. The gist of the application is that the tenant asserts that the landlord issued the them with a notice to terminate tenancy verbally. The same was to take effect within 5 days. The tenant was aggrieved by the said notice and commenced the present proceedings.
3. The landlord opposed the application vide the replying affidavit sworn on 9th October, 2023. He accused the tenant of illegally erecting some structures on the demised premises without his consent and generally denied the tenant's assertions. Parties elected to canvass the application by way of written submissions. I have considered the same and would proceed as follows
4. As stated above, the present dispute purportedly emanates from the landlord's verbal notice. The parties have not disputed to the jurisdiction of the Tribunal thus it is mutually implied that there exists a controlled tenancy. It is therefore imperative that the notice issued be assessed against the process of terminating controlled tenancy as stated below.



5. Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 Laws of Kenya (hereinafter referred to as 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 a tenancy, shall give notice in that behalf to the tenant in the prescribed form.”

6. Additionally, Section 4(4) provides that no tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, unless the terms and conditions of the tenancy provide for a period exceeding two months or the parties to the tenancy agree in writing to a lesser period of notice.
7. The two requirements therefore for a valid notice of termination of the tenancy is first, that the notice shall be in the prescribed form and secondly, that the notice shall not take effect until after expiry of two months, or such notice period as may be agreed by the parties. This was emphasized in the case of; *Munaver N Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited* [1995] eKLR, where the Court of Appeal at Mombasa in finding that the notice of termination of the tenancy was void for failing to comply with Section 4 of the Act stated as follows;

“The Act lays down clearly and 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 grounds on 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.”

8. It is explicit that the notice issued by the landlord falls short of the requirements laid above. The landlord has accused the tenant of making structural modifications on the demised premises without his consent. Even if this was true, the Tribunal cannot come into the aid of a party who acted in blatant disregard of the laid down procedure. Besides the provisions of *Cap 301* provides adequate redress mechanism against such.
9. I have perused the reference filed by the tenant and having made the above findings; it appears to me that it is now moot. This ruling substantially settles the issues raised therein.
10. The upshot of the above is that the tenant’s application and reference is allowed with no orders as to costs.

RULING DATED, SIGNED AND DELIVERED THIS 30TH DAY OF NOVEMBER, 2023.

HON. PATRICIA MAY

MEMBER

30. 11.2023

