



**Bayusuf (suing as Attorney and Agent of Barka Omar Ahmed Bayusuf v Dahman
(Tribunal Case E011 of 2023) [2023] KEBPRT 471 (KLR) (1 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 471 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E011 OF 2023
A MUMA, AG. CHAIR
SEPTEMBER 1, 2023**

BETWEEN

**SALIM OMAR AHMED BAYUSUF (SUING AS ATTORNEY AND AGENT OF
BARKA OMAR AHMED BAYUSUF APPLICANT**

AND

ALI OMAR DAHMAN RESPONDENT

RULING

A. Parties and Representatives

1. The Applicant Salim Omar is the Landlord and rented out space to the Respondent on the suit property located on Plot No. 1389 in Malindi. (hereinafter known as the 'landlord')
2. The firm of Bamomin Advocates & Associates represent the landlord/applicant appears in person in this matter.
3. The Respondent Ali Omar Dahman is the Tenant and rented space on the suit property located on Plot No. 1389. (hereinafter known as the 'Landlord')
4. The firm of Richard & Co. 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 19th April 2022 which was to take effect on 19th October 2022. The grounds upon which the landlord sought to terminate the tenancy are that they intend to carry out renovations on the premises and occupy the same with their children upon relocating back to Kenya from Yemen.
6. The Tenant failed to comply or oppose the Notice. As a result, the landlord has filed a Reference and a Notice of Motion application dated 8th December 2022 under section 12 of the [Landlords and](#)



Tenants (Shops, Hotels and Catering) Establishments Act Cap 301. The landlord was seeking orders that the tenant be ordered to grant vacant possession of the premises to allow the landlord to carry out renovations.

C. Landlord's Claim

7. The Landlord has filed a Reference and a Notice of Motion Application dated 8th December 2022 seeking that the tenant vacates and grant them possession of the premises to allow them carry out renovations and occupy the premises.
8. The landlord has also filed a supplementary affidavit dated 14th March 2023.

D. Tenant's Claim

9. The tenant has filed a Replying Affidavit dated 3rd March 2023 in which they oppose the claim by the landlord.

E. List of Issues For Determination

10. The issues raised for determination are as follows;
 - a. Whether the Termination Notice issued by the Landlord and the reasons advanced are valid?

F. Analysis and Findings

Whether the Termination Notice issued by the Landlord and the reasons advanced are valid?

11. The Landlord approached this tribunal by way of the reference dated 8th December 2023 seeking to enforce a Notice to Terminate tenancy that they had issued to the tenant which the tenant had failed to oppose or comply with.
12. The landlord stated that the grounds upon which they wanted to terminate the tenancy are that they intended to renovate the premises and occupy it with their children. The landlord stated that they were previously residing in Yemen and were now relocating back to Kenya due to the war in Yemen. Additionally, that they had lost their job and needed a place to reside.
13. The landlord also presented before the Tribunal that prior to occupying the premises they needed to carry out repairs since the same were in a dilapidated state after the tenant failed to carry out repairs as per their agreement.
14. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya Act at section 4(2) 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.
15. Section 4(4) further 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, as shall be specified therein



16. In the case of *Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited*, Civil Appeal No. 203 of 1994 it was 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 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.”

17. In this case the Landlord issued the tenant with a Notice to terminate tenancy on 19th April 2022 which was to take effect from 19th October 2022. Based on the above provision, the said notice was to take effect after more than two months which is as per the Provisions of CAP 301. As such the said notice can be deemed to be valid.
18. Having established that the Notice issued by the Landlord to the tenant was valid, in relation to the period, the other question for determination before the Tribunal is with regards to the reasons advanced for wanting to terminate the tenancy.
19. Section 7(1) (f) of The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya Act provides that some of the grounds upon which the Landlord may seek to terminate tenancy include;

- (f) that on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises

The court provided a threshold that landlords have to meet before they can satisfactorily be granted possession and stated as follows:

“For this purpose, the Court must be satisfied that the intention to reconstruct is genuine and not colorable: that it is a firm and settled intention, not likely to be changed: that the reconstruction is of a substantial part of the premises, indeed so substantial that it cannot be thought to be a device to get possession; that the work is so extensive that it is necessary to get possession of the holding in order to do it; and that it is intended to do the work at once and not after a time. Unless the Court were to insist strictly on these requirements, tenants might be deprived of the protection which Parliament intended them to have. It must be remembered that, if the landlord, having got possession, honestly changes his mind and does not do any work of reconstruction, the tenant has no remedy. Hence the necessity for a firm and settled intention

21. It was also stated in the case of *Fisher v Taylors Furnishing Stores Ltd* [1956] 2 All ER 78, that;

There must, therefore, be an intention and it must be an intention which in point of time is related to the termination of the current tenancy. It seems to me that the intention must be to do one of the following things:



- (i) to demolish the premises comprised in the holding; or
- (ii) to reconstruct the premises comprised in the holding; or
- (iii) to demolish a substantial part of the premises comprised in the holding; or
- (iv) to reconstruct a substantial part of the premises comprised in the holding; or
- (v) to carry out substantial work of construction on the holding; or (vi) to carry out substantial work of construction on a part of the holding.

If the landlord proves an intention to do one of those things, and to do it on the termination of the current tenancy, he must then prove that he could not reasonably do it without obtaining possession of the holding.

20. In the current case the notice issued by the Landlord stated that the grounds for termination were that the landlord intended to renovate the property and use it for both commercial and residential premises. From the case above, the grounds stated by the Landlord including the developments suffices as “proof of intention and that they cannot reasonably carry out the demolitions and developments without terminating the tenancy.
21. In an attempt to proof their intention, the landlord has annexed in their supporting affidavit a valuation and quantification report showing the current state of the building and the costs to be incurred to renovate the premises.
22. The Landlord has also presented before the Tribunal that the other reason for which they intend to use the premises for residential purposes is because they intend to relocate back to Kenya with her children and will need the same for commercial purposes as a source of livelihood for the family.
23. Based on the above I find that the reason given by the landlord are indeed valid. The landlord has attempted to show the Tribunal the current state of the premises and what works need to be done on the same. Additionally, they have given the reason that due to the hostile state of the country in which they resided previously they have been forced to relocate back to Kenya and make a living in Kenya. Denying them occupation of the premises would be inhumane and an act of injustice to them.
24. Based on the above and on a balance of probabilities the landlord has sufficiently shown that there exists a firm and real intention take back possession of the premises for purposes of carrying out developments on the same and I therefore proceed to order as follows;

G. Orders

- a. The upshot is that the Landlord’s Reference and Application dated 8th December 2022 are hereby allowed in the following terms;
- b. The landlord shall pay the tenant one month rent compensation for any inconvenience caused.
- c. The tenant shall hand over vacant possession of the premises to the landlord on or before 30th September 2023 failure to which the landlord shall be at liberty to break in and take back vacant possession of the premises.
- d. The landlord shall bear the Costs being Kshs. 25,000.00 payable to the tenant.

HON A. MUMA

AG CHAIR/MEMBER



BUSINESS PREMISES RENT TRIBUNAL

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 1ST DAY
OF SEPTEMBER 2023 IN THE ABSENCE OF PARTIES.**

HON A. MUMA

AG CHAIR/MEMBER

BUSINESS PREMISES RENT TRIBUNAL

