



**Adolwa v Evangelical Lutheran Church in Kenya (Tribunal Case
E016 of 2024) [2024] KEBPRT 1220 (KLR) (29 August 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1220 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E016 OF 2024
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
AUGUST 29, 2024**

BETWEEN

PATRICK ADOLWA TENANT

AND

EVANGELICAL LUTHERAN CHURCH IN KENYA LANDLORD

RULING

A. Dispute Background

1. The tenant/applicant moved this Tribunal vide a Reference under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 dated 14th May 2024 with a complaint that the landlord has issued a threat to unlawfully terminate his tenancy by locking the suit premises and refused to accept rent.
2. The tenant/applicant filed a notice of motion under a certificate of urgency dated 14th May 2024 in which he sought for the following orders; -
 - i. That the application be certified as urgent.
 - ii. That the landlord be temporarily prohibited and restrained from unlawfully evicting the tenant pending the hearing and determination of the application.
 - iii. That the landlord be temporarily prohibited and restrained from unlawfully interfering with the tenant's use and occupation of the suit premises pending the hearing and determination of the application.
 - iv. That the landlord be compelled to restore the tenant's access and control of the suit premises pending the hearing and determination of the case and in default be allowed to break the padlock under the supervision of the O.C.S Kisumu Central Police Station.



- v. That the landlord be compelled to accept rent at the rate of KES. 50,000 per month pending the hearing and determination of the matter or in the alternative, the tenant be allowed to pay the said rent through the tribunal.
 - vi. That the O.C.S Kisumu Central Police Station to ensure compliance of these orders.
 - vii. That costs of the application be provided for.
3. The application is supported by an affidavit of even date wherein the tenant deposes as follows; -
- i. That the tenant has occupied the suit premises being a workshop since 1st December 2020 and currently paying rent at KES. 50,000 per month.
 - ii. That the landlord intends to terminate the tenant's tenancy. A copy of the said letter is annexed as "MM-1".
 - iii. That the landlord's agents have proceeded to illegally lock the workshop for the duration of the notice period.
 - iv. That the tenant had written to the landlord upon receipt of the notice for termination of tenancy asking it to allow the tenant access to the workshop for the duration of the notice to deliver finished products to various clients and use the proceeds to reduce the arrears. A copy of the said correspondence is annexed as "MM-2".
 - v. That the tenant has made several attempts in good faith to negotiate with the landlord and offered a payment plan to clear the balance, efforts which have been frustrated.
 - vi. That the landlord has failed to give accounts of rents paid and due despite several requests and does not keep or issue rent books.
4. On 16th May 2024 the tribunal issued interim orders of injunction against the respondent pending hearing inter-partes.
5. The landlord filed a notice of motion under a certificate of urgency dated 22nd May 2024 in which it sought for the following orders; -
- i. That the application be certified urgent.
 - ii. That the tribunal be pleased to vacate the orders made on 16th May 2024.
 - iii. That the tenant's reference be set down for hearing inter-partes on its merits.
 - iv. That the landlord does break into the suit premises for purposes of taking an inventory of the property and/or items that are within the suit premises and thereafter keep such property in safe custody pending hearing and determination of the matter and/or as security for recovery of the rent arrears herein.
 - v. That there be an order for compensation to the landlord for the loss and damage arising out of the tenant's reference herein.
 - vi. That costs of application be provided.
 - vii. That tribunal issues any other orders it may deem fit in the circumstances.
6. The application is supported by an affidavit of even date in which the landlord deposes as follows; -



- i. That the tenant operates a carpentry and joinery woodwork business at a monthly rent of KES. 80,000 with effect from 7th January 2021, which rent was later reduced to KES. 50,000 with effect from 1st April 2023.
- ii. That by a letter dated 1st April 2019, the tenant applied for a long-term lease of a workshop space on the landlord's premises. A copy of the said letter is annexed to Page 1 of the landlord's List and Bundle of Exhibits.
- iii. That the landlord granted the tenant's request whereupon the parties proceeded to execute a tenancy agreement dated 1st October 2019 which is annexed at pages 2-4 of the landlord's list and bundle of exhibits.
- iv. The tenancy did not however commence immediately as the commencement was suspended to allow the landlord to undertake necessary renovations in the demised premises. This was addressed in the landlord's letter dated 20th February 2020 and 4th March 2020 which are annexed to pages 5 and 6 respectively in the landlord's list and bundle of Exhibits.
- v. That a second tenancy agreement dated 18th November 2020 was signed between the parties whereupon the tenancy was to commence on 1st December 2020. A copy of the agreement is annexed to the landlord's List and Bundle of Exhibits.
- vi. That by a letter dated 4th January 2021, the landlord confirmed that the tenancy would commence on 7th January 2021 following completion of the renovations at an agreed rent of KES. 80,000 for a period of 3 years with effect from 1st December 2020.
- vii. That the tenant started falling into rent arrears after the commencement of the tenancy. That vide a letter dated 22nd November 2022, the landlord implored the tenant to pay his rent arrears then standing at 15 months.
- viii. That by 25th November 2022, the tenant had accumulated rent arrears of KES. 1,150,000 as per the landlord's emails dated 8th November 2022 and 25th November 2022 which are annexed to pages 12 and 13 of the landlord's list and bundle of exhibits.
- ix. That by letters dated 13th July 2022, 1st February 2023 and 28th February 2023, the tenant complained of an unfavorable business environment and requested for rent review, which the landlord conceded to by granting the tenant rent reduction from KES. 80,000 to KES. 50,000 which reduction was agreed upon in the tenancy agreement dated 5th April 2023.
- x. That in light of the foregoing, with effect from 1st April 2023 the rent was reduced to KES. 50,000.
- xi. That despite the landlord's multiple reminders, the tenant persisted in his refusal to pay rent thereby causing the landlord to serve a notice of termination dated 14th March 2024 which is annexed at page 21 of the landlord's list and bundle of exhibits.
- xii. That vide an email dated 27th March 2024, the tenant notified the landlord that the tenant would be moving out of the suit premises signaling compliance with the said notice.
- xiii. That the tenant is likely to hide or cart away the property in the suit premises thereby rendering it impossible for the landlord to recover the rent arrears.
- xiv. That the suit premises have remained locked by the tenant.



- xv. That the tenant is in arrears of KES. 1,669,500 according to the landlord's statement of account.
 - xvi. That the orders issued on 16th May 2024 have tied the hands of the landlord by denying it the opportunity to mitigate the loss by repossessing the premises pursuant to the notice.
 - xvii. That the tenant has not presented any payment plans to clear the rent arrears as alleged in the tenant's reference.
7. The landlord further filed grounds of opposition dated 23rd May 2024 against the tenant's notice of motion and reference dated 14th May 2024 on grounds that the tenant is the one who had locked the suit premises and that the tenant has not disputed that he owes rent and has failed to show any evidence of a payment plan to demonstrate his commitment to clear the rent arrears among other grounds which have been stated in the supporting affidavit dated 22nd May 2024 stated above.
8. On 24th May 2024, the court issued orders that the landlord's application be served for hearing on 6th June 2024.
9. At a court hearing on 3rd June 2024, the court issued orders that both applications in this matter be canvassed together by way of written submissions and the date issued for inter-partes hearing for the application dated 22nd May 2024 was vacated.
10. The tenant opposes the landlord's application vide a replying affidavit dated 14th June 2024 in which he deposes as follows; -
- i. That the landlord indeed issued a notice to terminate tenancy dated 14th March 2024 which was to take effect on 15th May 2024.
 - ii. That a day after the issuance of the said notice, the tenant wrote to the landlord asking to be given a window to clear the said arrears as the tenant had found promising clients who were ready and willing to buy furniture and aid in easing the rent burden.
 - iii. That the landlord despite the request above proceeded to close down the suit premises.
 - iv. That the landlord and/or their agents informed the tenant that they no longer needed the said rent and they wanted the tenant out of the suit premises.
 - v. That the tenant acknowledges the rent arrears owed to the landlord.
 - vi. That the tenant owns goods whose worth is above KES. 2,500,000 still being held within the suit premises.
 - vii. That the tenant had plans to pay all outstanding debts however the same was thwarted by the illegal actions of the landlord.
11. The landlord filed a further affidavit dated 4th July 2024 in which it deposes that the allegations that he has goods worth KES. 2,500,000 within the suit premises is baseless as the tenant has not submitted any evidence to prove the said allegation.
12. The landlord further deposes that at no time has the landlord ever informed the tenant that it no longer needed to be paid the rent or rent arrears owing from the tenant and that the tenant has failed to pay his rent and rent arrears.



13. Both parties complied by filing their written submissions with the tenant filing his dated 14th June 2024 and the landlord filing its submissions dated 4th July 2024. We shall consider both submissions as we deal with the issues for determination.

B. Issues for determination

14. The following are the issues for determination.
- Whether the notice to terminate tenancy dated 14th March 2024 is valid and lawful.
 - Whether the tenant is entitled to the orders sought in the application dated 14th May 2024
 - Whether the landlord is entitled to the orders sought in the application dated 22nd May 2024.
 - Who shall bear the costs of both applications?

Issue (a) Whether the notice to terminate tenancy dated 14th March 2024 is valid and lawful.

15. The landlord herein issued the tenant with a notice to terminate tenancy dated 14th March 2024 which was due to take effect on 15th May 2024.
16. The tenant in his replying affidavit dated 14th June 2024 deposes that the said notice is illegal because the tenant was to vacate the premises after the lapse of 1 month which he states to be the 15th May 2024.
17. 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 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.”

18. We have perused the notice to terminate tenancy subject matter herein and note that the same is dated 14th March 2024 and was expressed to take effect on 15th May 2024, which constitutes a period 2 months as required by Cap 301 Laws of Kenya. In addition, we find that the notice is in the prescribed form according to Cap 301 Laws of Kenya.
19. Consequently, we find that the said notice to terminate tenancy dated 14th March 2024 is lawful and valid.

Issue (b) Whether the tenant is entitled to the orders sought in the application dated 14th May 2024.

20. The tenant approached this tribunal seeking for restraining orders against the landlord from evicting or interfering with his occupation of the suit premises, that the landlord restores the tenant’s access to the suit premises and that the landlord be compelled to accept rent at the rate of KES. 50,000 per month or in the alternative, the tenant be allowed to pay the said rent to the tribunal.



21. The tenant in his written submissions states that the landlord acted illegally by closing the premises a day after issuing the termination notice and that the mandatory period of 2 months had not lapsed.
22. The landlord on the other hand states in its written submissions that it is not true that it had locked the suit premises as alleged and that the landlord believes that the tenant is the one who locked up the suit premises perhaps to avoid being followed up to pay the outstanding rent arrears. The landlord also deposes the same in its replying affidavit.
23. We note that the court issued interim orders among other orders that the landlord restores the tenant's access and control of the suit premises. During the hearings and mentions in this matter, the tenant did not at any time mention that the said orders had not been complied with. The tenant has also not presented any evidence to show that the said premises had been locked by the landlord.
24. The tenant has also not denied that he owes the landlord the claimed rent arrears of KES. 1,669,500 as deposed in the landlord's supporting affidavit dated 22nd May 2024.
25. In the case of Samuel Kipkori Ngeno and Another – vs- Local Authorities Pension Trust (Registered Trustees) & Another (2013) eKLR at paragraphs 9 and 12, the court held as follows: -
 - “9. A tenant's first and main obligation is to pay rent as and when it becomes due for the landlord has the right to an income from his investment. Why would a tenant allow himself to fall into such huge arrears of rent”?
 - “12. The temporary injunction sought in the present application is an equitable remedy at the court's discretion. He who comes to equity must come with clean hands. A tenant who is in huge arrears of rent is underserving of the court's discretion. The court cannot be refuge of a tenant who fails to meet his principal obligation of paying rent as and when it becomes due”.
26. Despite the alleged closure of the suit premises by the landlord, the foregoing case provides sufficient guidance in directing that the tenant pays rent arrears owed to the landlord and in default the court shall direct that the landlord be at liberty to use lawful means to recover the same.
27. Based on the establishment that the notice to terminate tenancy is legal, the tribunal is not able to grant orders compelling the landlord to accept rent from the tenant.
28. Consequently, the tribunal shall order that the application dated 14th May 2024 be dismissed with costs to the landlord/respondent.

Issue (c) Whether the landlord is entitled to the orders sought in the application dated 22nd May 2024.

29. The landlord filed the application dated 22nd May 2024 seeking for orders that the tribunal vacates orders made on 16th May 2024, that the landlord be allowed to break into the suit premises for purposes of taking an inventory of the property/items therein and thereafter keep such property in safe custody pending hearing and determination of the matter and that the court issue orders of compensation to the landlord for loss and damage due to the tenant's reference.
30. The landlord in his written submissions has directed the court to paragraph 16 of its replying affidavit where the landlord states as follows; -
 - “... by email dated 27th March 2024, the tenant/applicant effectively notified the landlord/respondent that the tenant/applicant would be moving out of the demised premises,



thereby signalling that the tenant/applicant had agreed to comply with the said Tenancy Notice dated 14th March 2024. Particularly, the tenant/applicant stated thus:

“... our clients have turned up with high value business propositions that can allow us to settle the arrears in a couple of months even as we prepare to move out ... Meanwhile the CEO/Manager Concept Mahogany will furnish you with a payment plan to demonstrate our commitment to clear the arrears and move on ...”

31. We agree with the landlord in that the statement above is an indication that the tenant had agreed to comply with the said termination notice from the onset.
32. Upon perusal of the documents filed in this matter, there is no evidence of the proposed rent arrears payment plan by the tenant to show his willingness to pay the said rent arrears.
33. Furthermore, the tenant has not filed any reference under Section 6 of Cap 301, Laws of Kenya to oppose the notice to terminate tenancy dated 14th March 2024.
34. Section 6 of the Act states;

“A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal”

35. Based on the above analysis, the court finds that the landlord is deserving of the orders sought in the application dated 22nd May 2024 and this court shall vacate the orders issued on 16th May 2024.

Issue (d) Who shall bear the costs of both applications?

36. 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 shall award costs to the landlord/respondent.

C. Orders

37. Given the above analysis, the final orders which commend to us are;
 - a. The Notice to terminate tenancy dated 14th March 2024 is hereby upheld and the tenant’s tenancy in respect to the suit premises is hereby terminated.
 - b. The application dated 14th May 2024 is hereby dismissed with costs to the landlord/respondent.
 - c. The reference dated 14th May 2024 is settled in terms.
 - d. The landlord’s application dated 22nd May 2024 is hereby allowed in terms of prayer 2.
 - e. The tenant shall vacate the suit premises within the next 21 days and in default shall be forcibly evicted therefrom by a Licensed Auctioneer who shall be provided with security by the OCS Kisumu Central Police Station.
 - f. The tenant is liable to pay rent arrears owing to the landlord up to and including the date of such vacation or eviction and in default, the landlord is at liberty to use all lawful means to recover rent arrears against the tenant.



g. The tenant shall pay costs of Kshs.50,000/- to the landlord.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH AUGUST 2024

HON. JOYCE AKINYI OSODO - (PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE - (MEMBER)

In the presence of:

Otieno for the landlord.

No appearance for the tenant

