



**Okwako & another v Soneth Limited (Tribunal Case  
E210 of 2024) [2024] KEBPRT 438 (KLR) (8 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 438 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E210 OF 2024**

**P MAY, MEMBER**

**APRIL 8, 2024**

**BETWEEN**

**TERESIA OKWAKO ..... 1<sup>ST</sup> TENANT**

**PETER MIRINGU ..... 2<sup>ND</sup> TENANT**

**AND**

**SONETH LIMITED ..... LANDLORD**

***(Suing on their own behalf and on behalf of other tenants  
of Nairobi Block 27/658 and Nairobi Block 27/659)***

**RULING**

1. The application before me is the tenant's notice of motion dated 12<sup>th</sup> February, 2024 which sought for orders of temporary injunction against the landlord herein. The application is premised on the grounds set out on the face of it and the supporting affidavit. The tenants averred that they have been carrying out business on the demised premises for prolonged periods ranging from 5-10 years.
2. It was the tenant's position that they had always complied with the terms of the tenancy and that they were shocked when they were issued with the notice to terminate tenancy. The tenants accused the landlord of intimidation and harassment which had caused instability to businesses since the operating environment had ceased being conducive. The tenants indicated their willingness to vacate the demised premises but urged that they be granted an enhanced notice period e.g one year.
3. The application has been opposed by the landlord through the Replying Affidavit sworn on 4<sup>th</sup> March, 2024. The landlord stated that they discovered that the demised premises required renovations hence they resolved that they should lease the property to a 3<sup>rd</sup> party who had the financial muscle to effect the same. They therefore issued the notice which granted the tenants 2 months' notice period to relocate. The landlord reiterated that they have always acted within the precincts of the law including in issuing the notice.



4. The landlord decried the interim orders that had been issued in favour of the tenants stating that it had exposed them to potential loss and litigation for breach of contract thus urged the Tribunal to vary the said orders. The landlord urged the Tribunal to dismiss the application at the earliest instance to allow the 3<sup>rd</sup> party who had leased the premises to occupy and use the same.
5. The parties elected to canvass the application by way of written submissions. The issues for determination as framed by the parties are as follows:
  - a. Whether the notice to terminate tenancy issued by the landlord is valid
  - b. Whether the tenants are entitled to the reliefs sought in their application
6. The present dispute emanates from the notice of termination issued by the landlord which was to take effect as 20<sup>th</sup> March, 2024. It has been the tenants' contention that the notice was a shocker to them and that they have faced difficulty in finding alternative premises to use. It is against this background that they approached the Tribunal for the protection.
7. The parties herein have submitted to the jurisdiction of the Tribunal. Termination of a controlled tenancy is provided for under section 4 of [cap 301](#). The Section provides that;
 

“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 provisions of this [Act](#)”
8. Termination is by issuance of a notice which shall not be less than two months. The notice is required to comply with the requirements of section 4 (2) and (4) respectively which provide that:
 

“4(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”.

“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, as shall be specified therein”.
9. The tenants have in the application failed to succinctly point out to how the notice is defective. They have instead chosen to ask for the Tribunal to have some pity on them and allow them to occupy the demised premises for a further period of one year.
10. In our adversarial system where there are competing interests between the protagonists and where the outcome of litigation will favour one party over the other, it is prudent that parties elucidate their positions with passion and conviction. It is not the duty of a judicial body such as the Tribunal to aid an indolent party. The Tribunal in the present circumstances and taking into consideration the notice period that was issued is not convinced that the Notice was illegal.
11. In an application for interlocutory injunction the onus is on the applicants to satisfy the court that it should grant an injunction. The principles were set out in the precedent setting case of; *Giella v Cassman Brown & Co. Ltd* [1973] EA 358. In the case of [Mrao Ltd v First American Bank of Kenya Ltd & 2 Others](#) [2003] KLR 125 the Court of Appeal set out what amounts to *prima facie* case.
12. Having made a finding on the validity of the notice of termination, it is therefore clear that the tenants have failed to prove a *prima facie* case. It would therefore be pointless to assess the other 2 grounds for the grant of an injunction.



13. In the Case of; *Kenleb Cons Ltd v New Gatitu Services Station Ltd & Another* [1990] KLR 557 Bosire J (as he then was) stated that: -

“to succeed in an application for injunction an applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the application but must also show that he has a right, legal or equitable, which requires protection by injunction.”

14. The upshot of the above is that the tenants’ application is dismissed. The reference suffers the same fate as it was premised on similar grounds thus it would be a mere academic exercise to proceed to hear the same yet it lacks any feet to stand on.

15. In the end, the following orders commend itself on the Tribunal:

- a. The application dated 12/2/2024 is dismissed in its entirety.
- b. The reference is also dismissed
- c. The tenants shall vacate the demised premises within seven (7) days. The OCS of the police station with the requisite territorial jurisdiction to facilitate compliance.
- d. The landlord is awarded costs of the application and reference assessed at Kshs. 100,000/-

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8<sup>TH</sup> DAY OF APRIL, 2024**

**HON. PATRICIA MAY MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Ruling delivered in the presence of Muthoni holding brief for Bashir for the Landlords

In the absence of the Tenants

