



**Khayumbi v Mwangi (Tribunal Case E1174 of 2023)
[2024] KEBPRT 526 (KLR) (27 March 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 526 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1174 OF 2023
N WAHOME, MEMBER
MARCH 27, 2024**

BETWEEN

FRANCIS KHAYUMBI TENANT

AND

SUSAN WANJIKU MWANGI LANDLORD

RULING

1. This Ruling shall by implication also fully compromise the reference dated 27/11/2023. The reason being that the entire substratum of the suit and application herein turns on whether there is a valid notice to terminate the Landlord and Tenant relationship herein.
2. The proceedings herein were triggered by the Respondents letter dated 27/10/2027 by her advocates M/S Mwangi Mwangi & Associates purporting to communicate notice to terminate tenancy effective the 30/11/2023. In response, the Applicant filed the following pleadings,
 - i. Reference dated 27/11/2023.
 - ii. Certificate of urgency, Notice of Motion and the supporting documents thereof dated 27/11/2024.
 - iii. List of documents and the documents thereof all dated 27/11/2023.
3. The complaint in the reference was that:-

“She has unlawfully issued notice to evict the Tenant from the said Business Premises and unless the Landlord is stopped by this court, the Tenant and his staff stand to suffer irreparable loss and harm”.



4. In the Application, the Applicant seeks for orders to restrain and prohibit the Landlord from interfering with the demised premises being shop Nos 1 and 7 situated within Montage House at Grogon in Nairobi city.
5. The Applicant further filed a Replying Affidavit to the Respondent's notice of preliminary objection dated 13/12/2023. In it, the counsel for the Applicant demonstrated his registration as an advocate and also his license to practice law in the year 2023.
6. The landlady on her part filed the Replying Affidavit sworn on the 10/12/2023 and further filed a notice of preliminary objection dated 13/12/2023. The later was on the following principal grounds:-
 - i. That the reference herein was wrongly filed under Section 12(4) of Cap. 301,
 - ii. The proceedings herein were fatally defective and should be struck out and
 - iii. The proceedings were filed by a person (s) not qualified to practice law.
7. By Directions taken on the 14/12/2023;. By consent of the parties and with concurrence of the court, it was agreed to canvass both the application and the preliminary objection by way of written submissions. The Applicants submissions are dated 10/2/2024 and those of the respondent are dated 13/2/2024.
8. I have carefully perused all the materials placed before me including the submissions by the respective parties. Have also considered the law in application and the case law relied on. From the same, am of the view that the issues for determination are the following:-
 - A. Whether the Notice of Preliminary objection is merited.
 - B. Whether the reference is merited.
 - C. Who should bear the costs of this suit.
9. On whether the Notice of Preliminary objection dated 13/12/2023 is merited I would wish to state that by the Replying Affidavit sworn by Francis Muriithi on the 18/12/2023, the said advocate is qualified and licensed to practice law in this jurisdiction. He exhibited his practicing certificate dated 1/1/2023 for the year 2023. Therefore the allegation that the proceedings herein have been filed by a person or law firm that is not authorized does not hold any substance and is dismissed.
10. The subject of the other limb of the notice of preliminary objection was that the Applicant filed a reference under Section 12(4) of the Act instead of a complaint.

Regulation 5 of the Regulations to the Act provide that:-

"Reference to the Tribunal under Section 6(1) or Section 12(4) of the Act shall be in forms B and C in the schedule to these Regulations:.

Therefore a reference can either be under Section 6(1) or Section 12(4) and in both cases the same will be lawful.
11. In the case of Fredrick Mutua Mulinge T/A Kitui Uniforms - vs- Kitui Teachers Housing co-operative Society Ltd (2017) eKLR.

The court on the issued held that:-

"The letter was not a notice in the prescribed form provided for under the Act. In view of the foregoing findings, the appellants reference dated 31/7/2023 which was filed under Section 12(4) of the Act and



- the Notice of Motion of the same date were properly before the court and should have been allowed by the Tribunal”.
12. It then follows that the notice of preliminary objection dated 13/12/2024 is dismissed for lacking in any merit.
 13. On the 2nd issue of whether the reference dated 27/11/2023 is merited, I would wish to put reference on the following Section of Cap. 301.
 - i. 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 in the prescribed form”.

This Section is exemplified by Regulation 4(1) of the Regulations to the Act which provides that:-

“A notice under Section 4(2) of the Act by a landlord shall be in form A in the schedule to these Regulations”.
 14. For a termination notice to be effective Section 4(4) of the Act 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”.
 15. The final and mandatory requirement is that the landlord should state the ground upon which the termination Notice is founded on. In the present instance, no known ground known to the law was cited by the landlady as the foundation for the termination notice.
 16. The termination was in form of a letter, it required the Tenant to vacate the demised premises in 33 days and did not require the Tenant to agree or disagree with the notice in 30 days. This rendered the purported notice on the face of it unlawful.
 17. In the same case of Fredrick Mutua Mulinge supra, the court held that:-

“It is clear from the foregoing authorities that the tenancy notice dated 31/7/2024 was null and void for failing to give the Appellant two months notice as required under the Act and as such was of no legal effect. Life could not be breathed into the defective notice through the letter which the Respondent purported to amend the effective date of the notice. The letter was not in the prescribed form as provided for under the act”.
 18. The provisions of the Act herein are for strict compliance and have no room for compromise. You are either on the right side of the law or wrong all together. It has no middle ground so to say. This position was emphasized in the case of LALL -vs- Jeypee Investments Ltd Nairobi HCCA No. 120 of 1971 where it was held that:-

“The landlord and Tenant (Shops, Hotels and Catering establishments) Act is an especially enacted piece of legislation which creates a privileged class of Tenants for the purposes of affording them the protection specified by its provisions against the ravages of predatory landlords. Such protection can only be fully enjoyed if the provisions of the act are observed to the later. Otherwise the clearly indicated of intention of the legislature would be defeated. In order to be effective in this fashion the Act must be construed strictly no matter how harsh



the result.. The landlord and Tenant act laid down a code which parliament intended to be followed and if a landlord does not give notice of termination as prescribed, the notice will be ineffectual. This may seem a technical and unmeritorious defence, but there is no doubt that the court has no power to dispense with these time limits if the defendant chooses to object at the proper time. This is an Act which requires, in so far as giving of the notice is concerned, absolute and complete compliance with its peremptory provisions”.

19. The upshot of all these is that the landlady’s purported notice dated 27/10/2023 fell a shot of such a notice and no life could be breathed into it. I therefore declare the same illegal and of no legal effect nor consequence.
20. On the third issue of who should bear the costs of these proceedings, I determine the same in favour of the Applicant. He has succeeded in his claim and costs should follow him.
21. In the final analysis, I make the following orders:-
 - i. THAT the notice of preliminary objection dated 13/12/2023 is dismissed for lacking in any merit.
 - ii. THAT the notice of termination dated 27/10/2023 is declared illegal and of no legal effect nor consequence.
 - iii. THAT the applicants application and reference are allowed in terms that his tenancy cannot be interfered with except in strict compliance with Cap. 301.
 - iv. THAT the Respondent/Landlord shall pay costs assessed at Kshs.30,000/- to be offset from the rent payable on the demised premises.

Those are the orders of the court.

RULING, SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF MARCH 2024.

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HON NDEGWA WAHOME MBS, - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of Mr. Mureithi for the Tenant/applicant and in the absence of Mr. Mwangi for the Landlord.

