



**Pluristar Limited v Okeno (Tribunal Case E1127 of 2023)
[2024] KEBPRT 1366 (KLR) (6 September 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1366 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1127 OF 2023
P MAY, MEMBER
SEPTEMBER 6, 2024**

BETWEEN

PLURISTAR LIMITED LANDLORD

AND

ZADDOCK OKOTH OKENO TENANT

JUDGMENT

1. The landlord issued the tenant with a notice to terminate tenancy pursuant to section 4 of *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* dated 17th July, 2023. Subsequently, the landlord commenced the present proceedings by filing a reference on 14th November, 2023 seeking to have the tenant vacate the demised premises after the lapse of the notice.
2. The parties opted to have the hearing of the reference take precedence. The hearing therefore proceeded on 4th June 2024 and 15th July, 2024 respectively. The landlord called a witness who testified on their behalf. The landlord stated that the tenant took possession of the demised premises on 1st April, 2023 even though he refused to sign the lease agreement. The landlord stated that the lease was for a period of 12 months with effect from 1st April, 2023. The terms of the lease even though not reduced into writing were explicit and mutually agreed by the parties.
3. The landlord however stated that the tenant failed to pay rent as when it fell due. The rent payments were irregular. The landlord was therefore forced to issue him with a notice to terminate tenancy owing to default in payment of rent. It was the landlord's testimony that the tenant had since ceased carrying out their operations at the premises but failed to vacate. The landlord's caretaker had locked the premises but when they contacted the tenant to pick their goods, he remained adamant.
4. The tenant in their testimony stated that he entered the premises in mid- March 2023. He paid the rent for the months of March and April. He stated that the premises were locked on 29/6/2023. He confirmed that he had not paid rent as at the time the premises were locked. He however did not know



- who locked the premises. On cross examination he confirmed that he sometimes delayed in making rent payments. He stated that he had undertaken renovations at the demised premises.
5. Upon concluding the hearing, the parties informed the Tribunal that they were not going to file submissions. They sought to rely on the evidence on record. The Tribunal has considered the notice, the reference and the evidence on record and would proceed as follows:
 6. The present dispute stems from the notice of termination dated 17th July, 2023. The said notice was premised on the grounds that the tenant had defaulted in payment in rent.
 7. Section 4 of the Landlord & Tenant (Shops, Hotels & Catering Establishments) Act explicitly provides that there can be no termination and alteration of the terms and conditions of a controlled tenancy other than provided therein. The termination notice issued by the Landlord was issued as per the provisions of Section 4(2) of the Act.
 8. Section 4(2) of Cap.301, Laws of Kenya stipulates 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 to the tenant in the prescribed form.
 9. Section 7(1) (b) of the said Act provides one of the grounds for seeking to terminate tenancy by a landlord to be a tenant's default in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable. This is one of the grounds cited by the landlord.
 10. Section 107 (1) of the Evidence Act, Cap. 80 Laws of Kenya provides as follows:- "(1)Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist".
 11. The landlord has attached proof of the consistent default by the tenant. The law allows a landlord to terminate tenancy on the account of default by a tenant. The landlord has a right to benefit from their investment. The notice issued by the landlord was in form A as envisaged under the Act.
 12. In the end the Tribunal do therefore find that the notices to terminate tenancy by the landlord in this case are valid as the landlord has satisfied the requirements of section 7(1)(b) and section 4(5) of CAP 301 Laws of Kenya
 13. The tenancy ended when the termination came to effect as it is provided for under Section 4 (4) and Section 10 of the Act and the notice. This crystallized the Landlord's right to take over possession of the premises.
 14. As must be clear from the foregoing legal provisions and the reasons given hereinbefore, it is hereby ordered that; -
 - a. Reference filed on 14/11/2023 is hereby allowed.
 - b. Termination notice dated 17/7/2023 took effect as it is a valid notice under section 4 of the Act.
 - c. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF SEPTEMBER, 2024

HON. PATRICIA MAY

MEMBER

BUSINESS PREMISES RENT TRIBUNAL



Delivered in the presence of Muriithi holding brief for Kingori for the Landlord and in the presence of the Tenant

