



**Onsongo v Mohamed & another (Tribunal Case E143 of 2024)  
[2024] KEBPRT 1616 (KLR) (Commercial and Tax) (12 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1616 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
COMMERCIAL AND TAX  
TRIBUNAL CASE E143 OF 2024  
A MUMA, MEMBER  
NOVEMBER 12, 2024**

**BETWEEN**

**PAUL OKARI ONSONGO ..... TENANT**

**AND**

**ABDI AWIL MOHAMED ..... 1<sup>ST</sup> LANDLORD**

**HASSAN ISSA FARAH ..... 2<sup>ND</sup> LANDLORD**

**RULING**

**A. Parties And Representatives**

1. The Applicant, is an occupant in the business premises located on Plot No.24, Moi Avenue Street in Bungoma Township the suit property (hence the tenant).
2. The firm of M/S Situma & Co. Advocates represents the Tenant.
3. The Respondents, are the owners of the suit property located on Plot No.24, Moi Avenue Street in Bungoma Township (hence the Landlords).
4. The firm of J.W Nafuye & Company Advocates represents the Respondents in the matter.

**B. Background Of The Dispute**

5. The Tenant moved this tribunal vide a Reference, Notice of Motion Application and Plaint dated 6<sup>th</sup> August 2024 seeking for; the application to be certified urgent, the Tribunal to grant conservatory orders and the Landlords' notice dated 15<sup>th</sup> May 2024 be set aside and a temporary injunction restraining the Landlords their agents, assignees or any other person acting through them from evicting the Tenant before hearing and determination of the application and for costs of the application to be provided for.



6. The Tribunal issued orders dated 6<sup>th</sup> August 2024 that the application be fixed for hearing on 16<sup>th</sup> August 2024 and for the applicants to file and serve an affidavit of service as proof of service.

### **C. The Tenant's Claim**

7. The tenant claims that the Landlord issued an eviction notice dated 15<sup>th</sup> May 2024 that was to take effect on 1<sup>st</sup> August 2024 citing rent arrears.
8. It is therefore the Tenant's case that the Landlord's action issue of an eviction notice is illegal and hindering the running of his business.

### **D. The Landlord's Claim**

9. The Landlord avers that at the time the Notice to terminate was issued, the Tenant was in arrears totaling to KShs.132,000 and efforts to recover from him had proved futile.

### **E. List Of Issues For Determination**

10. I have carefully perused the material placed before this court by the parties and it is my considered opinion that the following issue falls for determination:
1. Whether the Tenant should vacate the suit premises

### **H. Analysis & Determination**

#### **Whether the Tenant should vacate the suit premises**

11. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (hereinafter 'the 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.

12. 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."

13. Section 7 of the Act provides for the grounds within which Landlord is allowed to issue a termination notice and at subsection (b) it provides as follows;

Where under section 4 of this Act the landlord served a notice of termination of a controlled tenancy on the tenant, the grounds on which the landlord seeks to terminate such tenancy may be such of the following grounds as are stated in the aforesaid notice—



that the tenant has defaulted 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;

14. In this case the Landlords avers that he has issued a termination notice dated 15<sup>th</sup> May 2024 which was meant to take effect on 1<sup>st</sup> August 2024 which was based on the grounds of failure to remit rent and it fell into arrears at KShs.132,000.
15. The Tenant admits that he is in arrears and states that they intend to make payments at KShs.20,000 per month upon agreement with the Landlord. The Landlord is however not amenable to the settlement and seeks to have the Tenant vacate the premises.
16. The tribunal notes that in the interest of justice, the Landlords cannot be compelled to settle the matter by agreeing to payment in installments if they are not agreeable to the same.
17. Based on the above, the Landlord's action to issue a termination notice is valid in law.

#### **I. Orders**

18. The upshot is that the Tenant's Reference and Application dated 6<sup>th</sup> August 2024 are dismissed in the following term;
  - a. The Tenant to pay the outstanding arrears of KShs.132,000 on or before 30<sup>th</sup> November 2024 failure to which the Landlord is allowed to levy distress to recover the amount and take vacant possession.
  - b. No orders as to costs.

**RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 12<sup>TH</sup> DAY OF NOVEMBER 2024 IN THE ABSENCE OF PARTIES**

**HON. A MUMA - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

