



**Korir v Rana Selection Limited (Tribunal Case E106 & E034 of 2024  
(Consolidated)) [2024] KEBPRT 1367 (KLR) (Civ) (9 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1367 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL**

**TRIBUNAL CASE E106 & E034 OF 2024 (CONSOLIDATED)**

**P MAY, MEMBER**

**SEPTEMBER 9, 2024**

**BETWEEN**

**WELDON KIPYEGON KORIR ..... LANDLORD**

**AND**

**RANA SELECTION LIMITED ..... TENANT**

**RULING**

1. The landlord filed approached the Tribunal by filing the application dated 5<sup>th</sup> August, 2024 seeking eviction orders against the tenant. The tenant on 6<sup>th</sup> August, 2024 filed an application seeking orders of temporary injunction against the landlord. The Tribunal subsequently issued directions that the two applications be canvassed concurrently by way of written submissions. I will summarize each of the parties' case below:
2. The landlord's application is premised on the grounds set out on the face of the application and the supporting affidavit sworn on 5<sup>th</sup> August, 2024. The landlord averred that he entered into a lease with the tenant vide the dated 6<sup>th</sup> March, 2017 which was for a term of 6 years. Upon the lapse of the term of the lease, he acceded to the tenant's request to use the demised premises for a further period of nine months as they sought for alternative premises.
3. The landlord stated that he proceeded to issue a notice of termination to the tenant dated 30<sup>th</sup> April, 2024 which was to lapse on 1<sup>st</sup> August, 2024. The grounds indicated in the said notice is that the landlord wished to occupy the premises for a period exceeding one year.
4. The Tenant on the other hand filed a complaint and an Application in Kisumu BPRT E034/24 seeking for orders under section 12 of the Act. The prayers are set out on the face of the Application and supported by the affidavit of Sultan Ali Khan.



5. The landlord filed a Replying Affidavit in opposition and annexed proof of refund of Ksh 150,000/= paid by the tenant after service of the notice under section 4 of the Act.
6. The tenant opposed the landlord's application through the replying affidavit sworn on 14<sup>th</sup> August, 2024. It was the tenant's position that they were never served with the notice to terminate tenancy dated 30/4/2024. They therefore challenged the validity of the said notice together with the affidavit of service dated 4<sup>th</sup> May, 2024. The tenant therefore notified the Tribunal of its intention to cross-examine the process server as to the veracity of their averments.
7. The Tribunal has considered the submissions filed by the parties in support of their respective positions and the evidence on record and frames the following issues for determination:
  - a. Whether the notice of termination dated 30<sup>th</sup> April, 2024 was served upon the tenant?
  - b. Validity of the notice of termination issued against the tenant.
8. The Tribunal will resolve the above questions in a sequential manner as the issue of service forms the crux of the present dispute.
9. As the learned authors of the book Chitale and Annaji Rao, The Code of Civil Procedure Vol II page 1670 observe:
 

“...But if the fact of service is denied, it is desirable that the process server should be put in the witness box and opportunity of cross-examination given to those who deny service.”
10. In the case of *Miruka v Abok & another* [1990] KLR 541, the process server was cross-examined about the service of summons which the defendants had disputed, and Omolo, J (as he then was) quoted with approval the following words of Platt, JA in *Baiwo v Bach* [1987] KLR 89 to the effect that:
 

“There is a qualified presumption in favour of the process server recognized in *MB Automobile v Kampala Bus Service* [1966] E A 480 at page 484. as having been the view taken by the Indian courts in construing similar legislation.

On Chitale and Annaji Rao;”The Code of Civil Procedure Vol II page 1670, the learned commentators say; Presumption of Service There is a presumption of service as stated in the process server's report, and the burden lies on the party questioning it to show that the return is incorrect. But an affidavit of the process server is admissible in evidence and in the absence of contest it would normally be considered sufficient evidence of the regularity of the proceedings. But if the fact of service is denied, it is desirable that the process server should be put in the witness box and opportunity of cross-examination given to those who deny the service”.
11. Properly guided by the above authorities, the Tribunal allowed the process server to be cross examined on 2<sup>nd</sup> September, 2024 on the veracity of the contents of the affidavit of service on record.
12. The manner of service of summons on a corporation is set out in order 5 rule 3 of the Civil Procedure Rules as follows:
  3. Subject to any other written law, where the suit is against a corporation the summons may be served –
    - (a) on the secretary, director or other principal officer of the corporation; or
    - b) if the process server is unable to find any of the officers of the corporation mentioned in rule 3(a) –



- i. by leaving it at the registered office of the corporation;
  - ii. by sending it by prepaid registered post or by a licensed courier service provider approved by the court to the registered postal address of the corporation; or
  - iii. if there is no registered office and no registered postal address of the corporation, by leaving it at the place where the corporation carries on business; or
  - iv. by sending it by registered post to the last known postal address of the corporation.
13. From the aforesaid provisions, the summons must, in the first instance, be served, “on the secretary, director or other principal officer of the corporation”, before resorting to other modes of service. The process server in the present dispute stated that he effected service on the manager of the company and after which the company’s stamp was affixed on the said notice. During cross- examination, he mentioned that the name of the manager was Tsuma. The tenant has merely denied service of the notice of termination but has not denied that the existence of a manager by such a name neither did they take any steps to report that the stamp did not belong to them.
14. Service is to be done by a qualified process server. In the present dispute, the process server produced their credentials which have not been challenged. The Tribunal therefore arrives at a conclusion that service was a regular one.
15. Having determined that the service of the notice of termination was proper, the Tribunal has to examine the validity of the said notice against the provisions of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya. The 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.”
16. Section 4(4) further 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
17. The tenant in their submissions have referred the Tribunal to the the case of Manaver N. Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited, Civil Appeal No. 203 of 1994 where 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.”
16. In this case the Landlord issued the Tenant with a notice to terminate tenancy on 30<sup>th</sup> April, 2024 which was to take effect from 1<sup>st</sup> August 2024. Based on the above provision, the said notice was to



take effect after two months which is as per the provisions of Cap 301. As such the said notice can be deemed to be valid.

17. Section 7(1) (g) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya Act provides that some of the grounds upon which the Landlord may seek to terminate tenancy include;

(g)subject as hereinafter provided, that on the termination of the tenancy the landlord himself intends to occupy for a period of not less than one year the premises comprised in the tenancy for the purposes, or partly for the purposes, of a business to be carried on by him therein, or at his residence."

18. Section 6 of the Act provides what ought to be done by a receiving party, in this case the tenant upon receipt of a notice under section 4. Section 6(1) provides thus," 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 took effect, refer the matter to the tribunal..."
19. The tenant despite receiving the Notice under section 4 above neither wrote an objection to the landlord nor filed a reference to the tribunal challenging the notice. The Reference to be filed in this situation would be Form B. The tenant did not also file an application to file reference out of time.
20. Section 10 of CAP 301states what happens when the receiving party does not oppose the notice or file a reference to the tribunal..." such notice shall have effect from the date therein specified to terminate the tenancy..."
21. In this case then, The Notice issued by the Landord took effect on the 1<sup>st</sup> August 2024.
22. The tenant has stated that they had paid advance rent. The same has been proven to have been returned.

### **Orders**

- a. The upshot is that the Landlord's Reference and Application dated 5<sup>th</sup> August, 2024 are hereby allowed and the Tenant's complaint and application dated 6<sup>th</sup> August 2024 are dismissed entirely.
- b. The Tenant shall immediately hand over vacant possession of the premises to the Landlord, failure to which the Landlord shall be at liberty to break in with the assistance of a Licensed Auctioneer and take over vacant possession of the suit premises
- c. The OCS Kericho Police Station to assist in compliance.
- d. The landlord is awarded costs assessed at Kshs. 75,000/-

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**HON. PATRICIA MAY**

**MEMBER**

**BUSINESS PREMISES REN TRIBUNAL**

**Delivered in the presence of Siwolo for the Tenant and Koech for the Landlord**

