



**Ouko v Omondi (Tribunal Case E030 of 2024)**  
**[2024] KEBPRT 1581 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1581 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**TRIBUNAL CASE E030 OF 2024**  
**GAKUHI CHEGE, CHAIR & J OSODO, MEMBER**  
**NOVEMBER 15, 2024**

**BETWEEN**

**MICHAEL ODHIANBO OUKO ..... APPLICANT**

**AND**

**ALLOYCE OMONDI ..... RESPONDENT**

**RULING**

**A. Dispute Background**

1. The landlord/applicant moved this Tribunal vide a Reference dated 8<sup>th</sup> May 2024 under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301 with a complaint that the tenant had fallen into 4 months' rent arrears amounting to Kshs 94,375/= and had also constructed an illegal structure on the landlord's premises in form of a bar without his consent. He is also accused of threatening the life of the landlord as a result of which the latter required an eviction order against him.
2. The landlord simultaneously filed a motion of even date seeking in pertinent part for an eviction order to issue compelling the tenant to vacate the premises on KISUMU/RIAT/1976/DAGO. He further seeks for a permanent injunction to issue prohibiting the tenant from reverting back to the premises.
3. The landlord also seeks for a demolition order to issue for the demolition of the illegal structure erected by the tenant on his land and for the tenant to pay Ksh.94,375/= being the outstanding rent arrears.
4. The application is predicated on the grounds that the landlord is the owner of the premises known as KISUMU/RIAT/1976/DAGO. As a result of the dilapidated state of the premises, non -payment of rent and threats of harm, the landlord issued the tenant with a Thirty days' (30) notice to terminate the tenancy and vacate the premises.



5. Despite the said notice, the tenant had been adamant to move out four months down the line. The landlord then visited the premises to ask the tenant to vacate the premises on various occasions but he was threatened and chased away by the tenant. The conduct of the tenant chasing away the landlord prompted him to visit his advocates to pursue the instant legal action.
6. According to the landlord, the Respondent has been a tenant in the house owned by Applicant since 2022. The tenant has not only breached the terms of his tenancy by failing to pay rent but by also constructing an illegal structure in the form of bar in the premises. The landlord pleads that he will suffer serious financial loss if the said eviction of the tenant is not enforced as the accumulated rent amounted to Kshs Kshs. 94,375.
7. The application is supported by the landlord's affidavit sworn on 8<sup>th</sup> May 2024 which basically repeats the grounds on the face thereof. We need not rehash the contents of the supporting affidavit.
8. The application is opposed through the replying affidavit of the tenant sworn on 9<sup>th</sup> August 2024 wherein it deposed that there is no tenancy termination notice at all in place or in force, issued by the landlord and none has ever been served upon him by anyone.
9. He further deposes that the only probable tenancy termination notice that he is aware of is the one dated 27<sup>th</sup> January, 2024 that this honourable Tribunal declared defective and dismissed on 19<sup>th</sup> June, 2024. It is the tenant's case that even if there was any tenancy termination notice that is in place, then the same is equally defective as by the reading of paragraph (c) of the grounds of the application states that the notice is for a 30 days period contrary to the provisions of Section 4(4) of Landlord and Tenant (Shops, Hotels and Catering Establishments) Cap 301, Laws of Kenya.
10. It is deposed that the Landlord's current application and reference are res judicata as the issues therein were fully and conclusively determined in KISUMU BPRT No. E015 OF 2024 (Aloyce Omondi-Vs-Michael Odhiambo Ouko). The tenant relies on annexures marked AOO-2 and 3 being copies of the application and reference in KISUMU BPRT No. E015 OF 2024.
11. He denies ever chasing the landlord away from his property or having ever instructed anyone to chase him away. According to the tenant, the landlord's allegations are untruthful and only meant to seek sympathy where none is available. No evidence at all has been availed to show that he ever attempted or chased the landlord away from his property in form of a Police OB report
12. According to the tenant, the landlord has all along granted him permission even when he was entering into the tenancy to renovate the building to fit and suit his trade and he has done such renovations since taking the premises. The landlord has never ever complained to him about the renovations and it was very shocking that the landlord when seeking to evict him and finding no ground for such eviction now alleges that the renovations are illegal.
13. The tenant deposes that he has been paying his rent but the landlord has not been issuing him with receipts. He admits that he once fell into arrears but the same had been caused by the Landlord's refusal to receive rent. He however subsequently agreed to receive the entire rent and agreed to meet the tenant so that he could receive the rent and any arrears but on the agreed date the landlord became evasive of meeting and receiving the rent.
14. The tenant deposes that at one time, the landlord refused to receive rent from him and on 25<sup>th</sup> January 2024, he sent him Kshs.70,500/= through Mpesa for rent but he reversed the whole amount back to him. He has attached annexure AOO-4 being a printout of the Mpesa transaction messages showing the payment and reversal.



15. According to the tenant, no cogent reason has been given by the landlord for seeking his eviction as he has since declined to receive rent, while confirming that the notice for termination of tenancy was for thirty (30) days' contrary to the law and the landlord has not at all expressed any intention to use the premises.
16. The tenant deposes that since the landlord is not willing to receive the rent, he was willing to deposit the rent plus any arrears thereon into court for the landlord to collect it therefrom. The tenant prays for a sum of Kshs 5,000/= to be offset against the rent owing being the amount awarded to him as costs in the previous case in terms of annexure AOO-1.
17. The tenant deposes that he has heavily invested in the premises through loans taken from Letshego and has established goodwill in the premises and it is almost impossible to secure an alternative premises for his business. He therefore prays for dismissal of the case.
18. The application was directed to be canvassed by way of written submissions but only the landlord complied.

## **B. Issues for determination**

19. The following issues arise for determination; -
  - a. Whether the notice to terminate tenancy dated 9<sup>th</sup> January 2024 is valid.
  - b. Whether the reliefs sought in the landlord's reference and application dated 8<sup>th</sup> May 2024 ought to be granted.
  - c. Who shall bear the costs of the case?

### **Issue (a) Whether the notice to terminate tenancy dated 9<sup>th</sup> January 2024 is valid.**

20. The landlord herein issued a notice to vacate dated 9<sup>th</sup> January 2024 which is annexed to the applicant's supporting affidavit.
21. Section 4(2) of Cap 301, Laws of Kenya provides as follows;

“(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.”
22. 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 held as follows: -

“The Act lays down clearly 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.”



23. Section 4(4) of the same statute provides as follows:-

“(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.”

24. We have perused the notice to terminate tenancy dated 9<sup>th</sup> January 2024 issued to the tenant by the landlord herein and have noted that the same is not in the prescribed form and therefore does not comply with Section 4 of Cap 301, Laws of Kenya. It is therefore invalid and cannot be enforced through an order of this Tribunal for the tenant’s eviction from the suit premises.

**ISSUE (b) Whether the reliefs sought in the landlord’s reference and application dated 8<sup>th</sup> May 2024 ought to be granted.**

25. We have already held that the prayer for the tenant’s eviction cannot be granted on the basis of the defective notice to terminate the tenancy. However, we note that the landlord claims a sum of Kshs 94,375/= as rent arrears. The tenant deposes that at one time, the landlord refused to receive rent from him and on 25<sup>th</sup> January 2024, he sent to him Kshs.70,500/= through Mpesa for rent but he reversed the whole amount back to him. He has attached annexure AOO-4 being a printout of the Mpesa transaction messages showing the payment and reversal.

26. It is therefore our finding that the claim for Kshs 94,375/= is owing by the tenant to the landlord. The landlord is however to blame for reversing the rent payment. He did not dispute the said allegation through a further affidavit. We shall order the tenant to pay the said amount together with any further accrued or accruing monthly rent via Mpesa to the landlord and if he declines or reverses the payments, the same shall be deposited with this Tribunal together with any future rent payments until he agrees to receive it.

27. In regard to the other prayers, we find that there is no evidence that the tenant undertook illegal constructions on the suit premises without the landlord’s consent. There is no evidence of service of an enforcement notice from the relevant County Government against the alleged illegal structures under the Physical Planning Act. We are therefore not satisfied that a demolition order can inure in favour of the landlord in the circumstances. The said prayer is therefore declined.

**Issue (c) Who shall bear the costs of the case?**

28. Under Section 12(1)(k) of Cap. 301, Laws of Kenya, costs of any suit before this Tribunal are in its discretion but always follow the event unless for good reasons otherwise ordered. We shall order each party to meet own costs of the case since the landlord had no legal basis in reversing the rent payment while the tenant did not move this Tribunal for appropriate relief upon the said reversal.

**C. Orders**

29. In conclusion, the following final orders commend to us; -

- a. The notice to terminate tenancy dated 9<sup>th</sup> January 2024 is declared invalid and of no legal effect.
- b. The Landlord’s reference and application dated 9<sup>th</sup> May 2024 are allowed to the extent that the tenant shall pay the sum of Kshs 94,375/= together with any further accrued or accruing monthly rent via Mpesa to the landlord and if he declines or reverses the payments, the same shall be deposited with this Tribunal together with any future rent payments until he agrees to receive it.



- c. The landlord is allowed to issue a notice under section 4(2) of Cap 301, Laws of Kenya.
  - d. Each party shall bear own costs of the case.
- It is so ordered.

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15<sup>TH</sup> DAY OF NOVEMBER 2024.**

**HON GAKUHI CHEGE**

**PANEL CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON. JOYCE AKINYI OSODO**

**PANEL MEMBER**

In the presence of:

Miss Mwangi for Miss Nyabeki for the Landlord

Tenant present in person

