



**Shangwira v Agweyu (Tribunal Case E049 of 2024)  
[2024] KEBPRT 773 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 773 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E049 OF 2024  
A MUMA, MEMBER  
MAY 23, 2024**

**BETWEEN**

**WILBRODA SHANGWIRA ..... TENANT**

**AND**

**ELIUD MUSHIRA AGWEYU ..... LANDLORD**

**RULING**

**A. Parties And Their Representatives**

1. The Applicant, Wilbroda Shangwira (the “Tenant”), is the tenant of the premises which is the subject matter of the present suit.
2. The Tenant appears in person in this matter.
3. The Respondent, Eliud Mushira Agweyu (the “Landlord”), is the proprietor of the parcel of land No. Isukha/Shinyalu/1379 upon which the suit premises that is the subject matter of this suit is erected.
4. The Firm of J.J. Mukavale Advocates represents the Landlord in this matter.

**B. Dispute Background**

5. The Tenant moved this Tribunal vide a reference dated March 11, 2024 opposing a notice of termination served by the Landlord in respect of the suit premises.
6. In response, the Landlord filed an affidavit in support of proof of readiness to carry out major renovations dated March 20, 2024.
7. Consequently, the Tenant filed a replying affidavit to the affidavit dated 20<sup>th</sup> March 2024.
8. The Landlord further filed a further affidavit dated 11<sup>th</sup> April 2024.



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

9. The Tenant's reference, dated 11<sup>th</sup> March 2024, opposes the notice of termination served by the Landlord for the said premises.
10. She avers that she took possession of the premises in December 2003, shortly after its construction in the same year, contrary to the Landlord's claim that the premises were built in 1995.
11. Furthermore, she claims that the premises are in good condition, equipped with electricity, and do not require significant renovation.
12. She also avers that the Landlord served her with a first notice in regards to the increment of rent, however upon hearing, the Tribunal determined the matter in her favour on 17<sup>th</sup> February 2024.
13. Additionally, she opposes the Landlord's second notice of intention to renovate the premises, alleging that these actions are merely tactics to cause her distress.
14. She refutes the Landlord's claim of bringing materials into the premises and denies any outstanding rent, stating that she has made advance payments.
15. Moreover, she highlights that she has recently restocked her shop, which she believes is not palatable to the Landlady's wife and has since brought fiction.

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

16. The Landlord avers that the suit premises were built in the year 1995 and are now old and require serious renovations.
17. He further avers that he had let the suit premises to four (4) Tenants, Wilbroda Shagwira(the Applicant), Yvonne Ikutwa, David Khananga and Vincent Atsango.
18. Furthermore, he avers that he needs to conduct extensive renovations so as to make the premises reasonably habitable and attract tenants by providing for better facilities such as better electrical supplies, water systems and internal provisions such as hot showers and flush toilets.
19. He claims that he duly served all four (4) Tenants with notices dated 18<sup>th</sup> January 2024 to vacate the premises to give room and enable him to undertake major renovations essential to the premises.
20. He further claims that he is indeed ready to undertake the major renovations and has provided proof of funds.
21. He further avers that he operates a hardware business from which other building materials can be sourced.
22. Additionally, he notes that all the tenants, except the Applicant, have already vacated the premises.

### **E. Issues For Determination.**

23. Having given full consideration to the reference and documentation placed before this Honourable Tribunal, I find that the sole issue that falls for determination is:
  - a. Whether the Landlord's notice of termination of tenancy on ground of renovation dated 18<sup>th</sup> January 2024 is lawful and valid?



## F. Analysis And Determination

### a. Whether the Landlord's notice of termination of tenancy on ground of renovation dated 18th January 2024 is lawful and valid?

24. 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."

25. 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"

26. 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."

27. In this case, the Landlord issued the Tenant with a notice to terminate the tenancy on 18<sup>th</sup> January 2024 which was to take effect from 1<sup>st</sup> April 2024. Based on the above provision, the said notice was to take effect after two months which is as per the provisions of the Act. As such the said notice is deemed to be valid.

28. Having established that the notice issued by the Landlord to the Tenant is valid, the main question for determination before this Honourable Tribunal is with regards to the substance of the said notice.

29. As per the Notice of termination dated 18<sup>th</sup> January 2024, the ground in which the Landlord seeks termination is based on the fact that he wants to do major renovation to the business and therefore requests this Tribunal to order the tenant to pay all rent arrears and vacate the business premises renovation to start.

30. Section 7(1)(f) of the Act provides that some of the grounds upon which the Landlord may seek to terminate a tenancy include:

"that on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises."



31. In the case of *Fisher v Taylors Furnishing Stores Ltd* [1956] 2 All ER 78, the court stated that:

“There must, therefore, be an intention and it must be an intention which in point of time is related to the termination of the current tenancy. It seems to me that the intention must be to do one of the following things: (i) to demolish the premises comprised in the holding; or (ii) to reconstruct the premises comprised in the holding; or (iii) to demolish a substantial part of the premises comprised in the holding; or (iv) to reconstruct a substantial part of the premises comprised in the holding; or (v) to carry out substantial work of construction on the holding; or (vi) to carry out substantial work of construction on a part of the holding.

If the landlord proves an intention to do one of those things, and to do it on the termination of the current tenancy, he must then prove that he could not reasonably do it without obtaining possession of the holding.”

32. In the present case, the Landlord's notice of termination indicated the need for major renovations to the business premises. As indicated in his affidavit dated 20<sup>th</sup> March 2024, such renovations include improvements to electrical supplies, water systems, and internal facilities such as hot showers and flush toilets in which such repairs require possession of the premises.

33. Additionally, the Landlord has served termination notices to all four tenants, three of whom have vacated the premises.

34. To prove his intention, the Landlord has provided this Honourable Tribunal with proof of funds for the period between 1<sup>st</sup> January 2024 to 4<sup>th</sup> April 2024 and exhibited annexures of a proposed plan, heaped hardcore, heaped ballast, heaped sand and Architect Certificate.

35. In *Evans Nyakwana vs. Cleophas Bwana Ongaro* (2015) eKLR it was held that:

“As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107(i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as Section 108 of the *Evidence Act* provides the burden lies in that person who would fail if no evidence at all were given as either side.”

36. Despite the Landlord having provided this Honourable Tribunal with evidence, the Tenant has refuted the same and as such the burden of proof has shifted to the Tenant.

37. Pursuant to Section 107 of the *Evidence Act*, the legal burden of proof now rests on the Tenant as she challenges the Landlord's claim and evidence. The Tenant has submitted annexures to this Honourable Tribunal. However, upon examination, the annexures have failed to provide a clear image of the state of the premises.

38. Based on the Landlord's evidence, it is the Tribunal's contention that the Landlord has sufficiently shown that there exists an intention to take up renovations on the premises which require vacant possession of the suit premises.

39. Additionally, in the notice of termination dated 18<sup>th</sup> January 2024, the Landlord requested this Honourable Tribunal to order the Tenant to pay all rent arrears, however, upon perusal of the



documentation, the Landlord has failed to substantiate the existence of any rent arrears or address this matter adequately as required in Section 3 of the Act.

**G. Determination**

40. In the upshot, the Tenant's Reference dated March 11, 2024 is hereby dismissed and the following orders shall abide:
- a. The Tenant shall grant the Landlord vacant possession of the premises within 30 days failure to which the Landlord is at liberty to reclaim the suit premises through break-in with the assistance of OCS Shisasari Police Station.
  - b. Each party shall bear their own costs

**RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 23<sup>RD</sup> DAY OF MAY 2024  
IN THE PRESENCE OF TENANT AND LANDLORD IN PERSON.**

**HON A. MUMA - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

