



**Nyulia v Macharia & another (Tribunal Case E1242 of 2023)
[2024] KEBPRT 1138 (KLR) (3 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1138 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1242 OF 2023
M MAKORI, MEMBER
MAY 3, 2024**

BETWEEN

JOYCE NYULIA APPLICANT

AND

ASINAH MACHARIA 1ST RESPONDENT

PETER MACHARIA 2ND RESPONDENT

RULING

1. The claim before this Tribunal was initiated by the Tenant vide Reference Dated the 11th of November, 2023 together with a Certificate of Urgency accompanied with a Notice of Motion Application and a Supporting Affidavit of even date.
2. In the Notice of Motion Application, the Applicant sought the following orders: -
 1. Spent.
 2. That the Honourable Tribunal be pleased to order the Respondents to reopen the suit premises and reinstate the Applicant/ Tenant into the premises forthwith and unconditionally.
 3. That the Honourable Tribunal be pleased to grant an order restraining the Respondents, their servants, employees, and/or agents, upon reinstating the Applicant/ Tenant into the suit premises, from breaking into the suit premises, trespassing, evicting, harassing the Applicant/ Tenant and/or in any other manner interfering with her tenancy pending the hearing of the application inter partes.
 4. That the Honourable Tribunal be pleased to order for payment of damages suffered amounting to Kshs 1,300 and Kshs 4,500/= each day that the hotel remains closed until the Applicant/Tenant is reinstated.



5. That the Honorable Tribunal be pleased to grant any other order it deems fit to grant.
 6. That the OCS Matopeni Police Station do ensure compliance of these orders.
 7. That costs of the application be borne by the Respondents.
3. This Honourable tribunal on the 15th of December 2023, issued interim orders restraining the Respondents from interfering with the Applicant's Tenancy. There is an Affidavit of service of these Orders upon the Respondents.
 4. The Applicant further filed another Application under Certificate of Urgency, dated 21st of December 2023 in which she alleges that the Respondent wilfully defied the Orders issued on the 15th of December, 2023 by this honourable Tribunal and continued interfering with the Applicant's possession of the suit premises.
 5. On the 22nd of December 2023, this Honourable Tribunal issued other interim orders compelling the Respondent to comply with the orders issued on the 15th of December, 2023.
 6. Subsequently the Respondent filed a Replying Affidavit, sworn on March 12, 2024, claiming that the Tenancy Agreement with the Applicant had lapsed in September of 2023. He further depones that the Applicant was in arrears with rent payments, which ultimately led to the closure of her business.
 7. Both parties did not file their respective Submissions.
 8. From the facts presented to this Tribunal, three issues arise for Determination
 - i. Whether there exists a Landlord/ Tenant relationship between the parties? ii. Whether the Landlord followed the right procedure in evicting the Tenant? iii. Whether the Tenant is entitled to the reliefs sought?

- Whether There Exists a Landlord/Tenant Relationship Between the Parties?

9. Section 12(4) of cap. 301, Laws of Kenya confers this Tribunal jurisdiction to investigate any complaint relating to a controlled tenancy made to it by the landlord/tenant and make such order thereon as it deems fit. As such, the first qualification as earlier observed is that there must be in existence a landlord and tenant relationship.
10. To arrive at a determination, I consider the Tenancy Agreement filed by the Respondents which indicates the Tenancy period as 1st of September, 2022 to 1st of September... the year is truncated on the copy filed but I am inclined to believe that it is 2023 as averred by the Respondent since the Applicant has not challenged the same.
11. The tenant claims to have been paying rent religiously for the 1 year and 3 months she has been in occupation of the premises. Save for the month of October and November which notably according to the Tenancy Agreement is two months after expiry of the Tenancy Agreement.
12. The Tribunal acknowledges that despite the lapse of the Tenancy period, the Landlords' ongoing demand for rent from the Tenant indicates the persistence of a Landlord/Tenant relationship between the parties. Although it was an implied contract, the essence of this relationship remains intact.

Whether the Landlords followed the right procedure in evicting the Tenant?

13. In addressing this issue, I shall consider the formal requirements of a notice for termination of a tenancy agreement. On this, I am guided by Section 4(2) of the [Landlord and Tenant \(Shops, Hotels](#)



and Catering Establishments) Act Cap 301 Laws of Kenya (hereinafter referred to as the “Act”) which 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.”

Additionally, Section 4(4) of the Act provides that:

- (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:

Provided that—

- (i) where notice is given of the termination of a controlled tenancy, the date of termination shall not be earlier than the earliest date on which, but for the provisions of this Act, the tenancy would have, or could have been, terminated;
- (ii) where the terms and conditions of a controlled tenancy provide for a period of notice exceeding two months, that period shall be substituted for the said period of two months after the receipt of the tenancy notice;
- (iii) the parties to the tenancy may agree in writing to any lesser period of notice.

14. This position was emphasized in the case of Munaver N Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited [1995] eKLR, where the Court of Appeal at Mombasa in finding that the notice of termination of the tenancy was void for failing to comply with Section 4 of the Act 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 grounds on 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.”

15. Section 4(2) mentioned above, stipulates that the Notice of Termination of tenancy should be the prescribed form, specifically Form A, as provided for in the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966.
16. The Tenant alleges that her business was closed and that another Tenant is currently in occupation of the suit premises. Based on the above analysis, it is my finding that the Respondents did not follow the right procedure in evicting the Tenant. Until such time as either of the parties follows the right procedure for termination of the Tenancy, the Applicant remains the rightful Tenant of the suit premises.

Whether the Tenant is entitled to the reliefs sought?

17. The landlord avers that the Tenant was in rent arrears which led to her business being closed and her properties kept in safe custody until the rent arrears are cleared. On the other hand, the Tenant claims



that it is as a result of the Landlords' harassment and constant interference of her business operations that she has been unable to pay her rent on time.

18. The Tenant further claims that when the suit premises was closed, she had perishable goods inside which caused her huge losses. She prays that this Honourable Tribunal orders for payment of damages suffered amounting to Kshs 1,300/- and Kshs 4500/- for each day that the hotel remains closed until she is reinstated.
19. I have not seen evidence of the losses claimed and therefore it would be difficult to ascertain the losses incurred by the Applicant. It is however clear that the closure of the suit premises and the constant disregard of court orders by the Respondent has occasioned loss to the Applicant.
20. Consequently, this tribunal is unable to make a finding on the amount of money in losses incurred by the Tenant due to the closure of the suit premises.
21. Based on the foregoing, the Tribunal finds that the Tenant's Application is merited and makes the following orders; -
 1. That the Landlords shall immediately return all the properties in their custody belonging to the Tenant.
 2. That the Landlords are hereby ordered to reopen and reinstate the Tenant into the Suit Premises within the next Seven (7) days.
 3. That upon reinstatement of the Tenant into the suit premises, the Respondent, their servants, employees, and/or agents be and are hereby restrained from breaking into the suit premises, trespassing, evicting, harassing the Tenant and/or in any way interfering with her tenancy.
 4. That the OCS Soweto Police Station shall oversee compliance with these orders.
 5. That the Respondent shall bear the cost of this Application.

HON. MIKE MAKORI

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by Hon Mike Makori this 3rd day of May, 2024 in the presence of Joyce Nyuliah and in the absence of the landlord.

HON. MIKE MAKORI

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

