



**Jojemi Chemical Limited v Mbugua (Tribunal Case E351 of 2023)
[2024] KEBPRT 862 (KLR) (25 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 862 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E351 OF 2023
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
JUNE 25, 2024**

BETWEEN

JOJEMI CHEMICAL LIMITED TENANT

AND

ELIZABETH WANJIKU MBUGUA LANDLADY

RULING

1. The Tenant commenced these proceedings by way of the reference dated 13th March 2024. The same was anchored on Section 6 of the [Landlord and Tenant \(Shops, Hotels and Catering establishments\) Act](#) (Cap 301) hereinafter the Act. The grounds for the reference were stated to be:-
 - a. Illegal termination of the Business tenancy regarding shops “A” and “B” on plot No. BL-LR/4830, Musa House, Ladhies Street Nairobi.
 - b. Illegal interference with quiet occupation of business premises regarding shops “A” and “B” on plot Number BL-LR 14830, Musa House, Ladhies street Nairobi.
 - c. The Tenant prayed that “The notice be nullified and the Respondent be restrained and desist from terminating and interfering with business tenancy illegally”.
2. The reference was accompanied by a notice of motion application of the same date. In principal, the application sought that the Tenant be allowed quiet possession of the demised premises otherwise known as shop Nos. “A” and “B” at plot No. BL-LR 14830 Musa House, Nairobi. The Tenant also sought that it be allowed to pay rent at the existing rates pending the hearing of the reference herein.
3. The tenant further filed its witness statement duly signed by its authorized officer namely Esther Wamuyu Wamaitha dated 13th March, 2024, Authority to Act and list of documents of the same date.
4. When the matter came to court on the 15th March 2024, the application dated 13th March 2024, and the reference of the even date were struck out for non payment of the requisite court fees. The said



court fees was later on paid in full and both the reference and the application were reinstated and the application allowed in terms of prayers 2, 5 and 6 in the interim.

5. On the 3rd May 2024, directions were taken on the disposal of the application dated 13th March 2024 in the presence of both parties. The Tenant was represented by Mr. Manenga whereas Mr. Gikonya represented the landlord. The matter was fixed for mention on the 30th May 2024 to confirm that the parties had filed their respective submissions and take a date for Ruling.
6. The Tenant filed its submissions as directed by the court but the respondent never filed any responses to either the application nor the reference and also did not file any submissions. We have confirmed that at the time of writing this ruling, there has not been a response nor submissions to these proceedings.
7. We have taken cognizance of all the filings in this matter including the Tenant's submissions dated 20/5/2024. We also appreciate the law and the case law cited in support of the same. In our view this matter turns on the validity and/or legitimacy of the termination notices issued by the landlord and dated the 7th February 2022 and 22nd February, 2024.
8. From the outset, it is clear and plain that the said notices are in conflict with the law. The same are not in satisfaction of Section 4(2), 4(4) and 7 of the Act and Regulation 4 (1) of the Regulations to the Act in that they are not in the prescribed form, do not give the minimum time requirement of 60 days for the notice to be effective and no grounds were cited for such notice as recognized by the law.
9. In this we seek reliance in the Locus Classicus case of *Fredrick Mutua Mulinge T/A Kitui uniform v Kitui Teachers Housing Cooperative Society Ltd* [2017] e KLR where the court held that:-

“It is clear from the foregoing authorities that the tenancy notice dated 28/6/2024 was null and void for failing to give the appellant two (2) months notice as required under the Act and as such was of no legal effect....

The letter was not a notice in the prescribed form provided for under the Act. In view of the foregoing findings, the appellant's reference dated 31/7/2014 which was filed under Section 12(4) of the Act and Notice of Motion of the same date were properly before the court and should have been allowed by the Tribunal”.

10. Further the court of appeal laid down stated the pre-requisites for a valid termination notice in the case of manner *N. Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Ltd* Civil Appeal No. 203 1994 where it held that:-

“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”.

11. We therefore make a determination that the termination notices dated 7/2/2022 and 22/2/2024 are unlawful and without any legal effect nor consequence. It then follows that the Tenant's application dated 13/3/2024 is merited and the same is allowed in the terms that will be outlined in our orders hereinafter.



12. In our view, the reference herein and dated 13/3/2024 is also for the nullification of the said termination notices dated 7th February 2022 and 22nd February 2024 respectively. We have already found that the same are unlawful. There is therefore nothing left for adjudication and decision in the said reference. The same will therefore be decided in the same terms with the application.
13. On costs, we appreciate that both the reference and the application were not defended. We have also noted that the Tenant had completed the compliance process as required under order 11 of the Civil Procedure Rules. We therefore award the costs of both the reference and the application to the Tenant.
14. In the final analysis, we allow the Tenant's reference and application in the following terms:-
- i. That the notices of termination dated 7th February 2022 and 22nd February 2024 respectively are declared to be unlawful and of no legal effect.
 - ii. That the Tenant shall be allowed quiet possession of the demised premises unless the same is disturbed in complete compliance with the law.
 - iii. That the Tenant is awarded costs assessed at Kshs.30,000/- to be offset from rent payable to the Landlord.

Those are the orders of the court.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF JUNE, 2024.

HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI

PANEL CHAIRPERSON MEMBER

BUSINESS PREMISES RENT TRIBUNAL BPRT

Ruling delivered in the presence of Mr. Maringa for the Tenant/Applicant and in the absence of M/S Gikenye for the Landlord.

HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI

PANEL CHAIRPERSON MEMBER

BUSINESS PREMISES RENT TRIBUNAL BPRT

