



**Keli v Mwanza (Tribunal Case E779 of 2022)
[2023] KEBPRT 26 (KLR) (6 February 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 26 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E779 OF 2022
A MUMA, VICE CHAIR
FEBRUARY 6, 2023**

BETWEEN

ANTONY KELI TENANT

AND

DENNIS NDUNDA MWANZA LANDLORD

RULING

A. Parties And Their Representatives

1. The applicant Antony Keli is the tenant and has rented space on the suit property Msalaba Building, Sweet waters area, Machakos-Kangundo Road (hereinafter known as the ‘tenant’).
2. The firm of C.M Maweu Advocates represents the Tenant/Applicant in this matter.
3. The respondent/Landlord has rented out space for the business in the suit property to the tenant (hereinafter the “landlord”)
4. The firm of Langalanga & Company Advocates represent the Landlord/Respondent in this matter.

B. The Dispute Background

5. On August 31, 2022, the Applicant/Tenant moved this tribunal by way of a reference and a notice of motion dated August 31, 2022. The notice of motion was under certificate of urgency and is anchored on section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering\) Establishments Act](#) cap 301. The Applicant/Tenant was seeking amongst other orders that pending the hearing and determination of the application and the reference the tribunal issues a temporary injunction restraining the respondent/landlord from evicting, intimidating, threatening and/or in any other manner whatsoever interfering with the applicant’s/tenant’s quiet possession of the premises.



6. The applicant/tenant also sought a permanent injunction be issued restraining and prohibiting the Respondent/Landlord from evicting, intimidating, threatening and/or in any other manner whatsoever from interfering with the Applicant's/Tenant's quiet possession of the premises. Lastly, the Applicant/Tenant prayed that the Officer Commanding Station Machakos Police Station to oversee the implementation of those orders. Which orders the tribunal granted on March 16, 2022.
7. The Landlord entered into a tenancy relationship with the Tenant and this was reduced into writing vide a tenancy agreement dated May 28, 2022 executed by both parties. The Tenant submitted that the Landlord verbally informed him of his intention to terminate the tenancy agreement and refused to accept payment for the month of August 2022.
8. The Landlord submitted that he entered into a written lease dated May 12, 2022 with the Tenant for a period of 2 years over the suit premises at a monthly rent of Kshs.12,000/=. The Tenant is apprehensive of the verbal notice of termination resulting to the filing of the instant suit
9. The Landlord submitted that the Tenant has failed to prove the principles that warrant the issuing of injunctive orders.

C. The Tenants/applicants' Claim

10. The Applicant filed a Reference and a Notice of Motion dated August 31, 2022.
11. The Applicant filed written submissions dated October 28, 2022.
12. On August 5, 2022 this Tribunal gave orders, inter alia, that the landlord/respondent is restrained from evicting, intimidating, threatening and/or in any other manner whatsoever interfering with the applicant's quiet possession of and activities on Msalaba Building, Sweet Waters area, Machakos – Kangundo Road pending the hearing of the application inter partes.
13. The matter was fixed for hearing on September 21, 2022.

D. The Landlord's Claim

14. The respondent filed a replying affidavit and filed submissions dated November 11, 2022.

E. Issues For Determination

15. From the facts outlined above, I see one issue that needs to be determined by this Tribunal, whether there exists a valid notice of termination of the tenancy

F. Analysis And Determination

16. I have perused the pleadings and the submissions of both parties. From the onset, I refer to section 4 (1)&(2) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) which states as follows:

- (1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall 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 the following provisions of this Act.
- (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.

17. In the present matter, there is no notice of termination by the respondent that has been adduced as evidence. The aforesaid Act expressly states that a notice of termination by the Landlord should be issued in the prescribed form.
18. In view of the foregoing, this Tribunal is not convinced that the applicant has demonstrated enough grounds to support his prayer for an injunction. The Tribunal cannot purport to injunct a notice that does not conform to the standards required by the law. A verbal notice of termination is of no effect and this Tribunal cannot consider it valid if it was made at all.
19. Noting that the respondent has not issued a valid notice of termination of tenancy, he is under an obligation to receive rent payments from the applicant when they become payable. The applicant has a corresponding duty to pay the full amount of rent or risk receiving a notice of termination pursuant to section 7 (1) (b) of the Act.

G. ORDERS

20. Consequently, this Tribunal makes the following orders. The upshot is that:
 - a. The applicant's/tenant's Reference and Notice of Motion both dated August 31, 2022 are hereby allowed;
 - b. Applicant/Tenant to continue paying rent as agreed;
 - c. Respondent/Landlord to cease and desist from harassing, intimidating or in any other way interfering with the peaceful possession of the suit property, that is, Msalaba Building, Sweetwaters area, Machakos-Kangundo Road;
 - d. Respondent/Landlord at liberty to issue a valid notice in the prescribed form

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 6TH DAY OF FEBRUARY 2023 IN THE PRESENCE OF LANGALANGA FOR THE LANDLORD AND IN THE ABSENCE OF THE TENANTS.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

