



**Piccolo Mondo Enterprises Limited v Pes (Tribunal Case  
E004 of 2023) [2024] KEBPRT 775 (KLR) (9 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 775 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E004 OF 2023**

**P MAY, MEMBER**

**APRIL 9, 2024**

**BETWEEN**

**PICCOLO MONDO ENTERPRISES LIMITED ..... TENANT**

**AND**

**PASQUALE PES ..... LANDLORD**

**RULING**

1. The tenant filed the reference dated 9<sup>th</sup> January, 2023 seeking to challenge the landlord's notice to terminate tenancy dated 22/12/2022. The landlord's notice had been issued on the grounds that the landlord intended to demolish the demised premises and the same could not be undertaken without obtaining vacant possession. The parties appeared before the Tribunal where the parties the reference was set down for hearing. On the appointed date however, the tenant was not at the Tribunal and the parties were directed to have their witness statements adopted and the hearing to proceed by way of written submissions.
2. The tenant was aggrieved by the aforementioned directions and filed an application under certificate on 13<sup>th</sup> December, 2023 seeking to have the said directions reviewed. The tenant stated that they stood to suffer prejudice in the event contested issues in the notice of termination were not assessed orally thus insisted that the reference should be fixed for hearing orally.
3. The parties proceeded to canvass the application and the reference by way of written submissions. The tenant's submissions only focused on the application without addressing the merits of the refence. This was despite the fact that there had been no order setting aside the previous directions issued by the Tribunal. I will nonetheless proceed to assess the merits of the application first.
4. The Tribunal in dealing with the application for review, it is guided by the provisions of Order 45 Rule1 of the [Civil Procedure Rules](#), 2010 which states as follows: -  
45Rule 1(1) Any person considering himself aggrieved-



- a. By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
  - b. By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for review of judgement to the court which passed the decree or made the order without unreasonable delay.[Emphasis mine]
5. Under these provisions, an applicant is required to show either that there was an error apparent on the face of record or that there has been discovery of new and important matter or for any other sufficient reason for the court to review.
  6. The Court of Appeal in [\*National Bank of Kenya Limited v Ndungu Njau\*](#) [1996] KLR 469 explained what constitutes an error of law apparent on the face of the record:
 

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be ground for review. [Emphasis mine]”
  7. The present application was filed by 13/12/ 2023, only four days before the scheduled mention date to confirm the filing of submissions on the reference. The tenant who was aware of the said directions has not offered any plausible explanation on this delay. Nonetheless even if the Tribunal was to overlook the said delay and consider the other grounds for the review application, the same have not been sufficiently satisfied. The tribunal considered the age of the matter and the fact that the tenant had contributed to the delay in the hearing of the reference. The matters raised could be ventilated through the documents adduced as evidence. The order to have the reference canvassed by written submissions was therefore proper and balanced the interests and rights of both parties. The application is therefore without merit.
  8. The parties do not submit to the existence of tenancy which is in the nature of controlled tenancy. Termination of the said tenancy requires issuance of a termination notice in prescribed form. It is incumbent upon this tribunal to assess that the notice issued to the tenant by the landlord is properly as prescribed in law by Cap 301.
  9. Section 4 of the [\*Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act\*](#) states:
    4. Termination of, and alteration of terms and conditions in, controlled tenancy
 

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.
    - (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.
10. It is evident that the notice of termination of the tenancy herein was in Form A as prescribed by the Act. Further, the notice of termination of the tenancy was to take effect on 24<sup>th</sup> February, 2023, being a period exceeding two months as required by the Act.
11. Having established that the notice of termination of the tenancy was in the prescribed form, I shall proceed to analyze the substance of the notice with regard to the grounds of termination of the tenancy as follows:

**Whether the landlord has met the requirements of section 7 (1) (f) of the Act?**

12. Article 40 of the [Constitution](#) of Kenya 2010 guarantees the right of every person either individually or in association with others, to acquire and own property. This includes the right of a proprietor of land to enjoy and benefit from the use of such property and to deal with the property as they please within the confines of the law.
13. Accordingly, Section 7 of the [Act](#) clearly stipulates the grounds upon which a landlord may seek to terminate tenancy. One of the grounds as enshrined in section 7 (f) of the Act is: -

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- (f) 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.
14. The above provision affirms the right of the landlord to undertake renovations and/or repairs to their property. According to the termination notice served upon the tenant, the landlord sought to terminate the tenancy on the ground “that on termination the landlord intends to do renovations and she wouldn’t be able to do so without obtaining vacant possession.”
15. The landlord has tendered evidence to prove that it is necessary to carry out the renovations. The Tribunal is therefore convinced that the notice was issued in a regular and proper manner and not maliciously as alleged by the tenant.
16. The upshot of the above is that the notice of termination dated 22/12/2022 is allowed with no orders as to costs. The tenant vacates the demised premises within a month from the date hereof. Parties to also settle any existing contractual obligations such as payment of rent within the said period. This Ruling settles the Reference dated 9.01.2023.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF APRIL, 2024.**

**HON. PATRICIA MAY**

**MEMBER**



## **BUSINESS PREMISES RENT TRIBUNAL**

In the presence of;

Amina holding brief for Ms. Iman for the Tenant

