



**Ongori v Nyaribo (Tribunal Case E037 of 2024)
[2024] KEBPRT 1420 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1420 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E037 OF 2024
CN MUGAMBI, CHAIR
SEPTEMBER 25, 2024**

BETWEEN

NACKSON KEBATI ONGORI LANDLORD

AND

THOMAS NYARIBO TENANT

RULING

1. The Landlord's Application dated 23.5.2024 seeks orders that the tenancy between the parties terminated on 5th April 2024, that the Tenant be evicted from the suit premises, that the Tenant pays the outstanding rent arrears and that the OCS Nyamira police station does ensure compliance with the court orders.
2. The Landlord/Applicant has filed an affidavit sworn on 23.5.2024 wherein he has deponed that the suit premises are in dire need of renovations which cannot be done while the Tenant is in occupation.
3. The Landlord has deponed in his said affidavit that he served upon the Tenant the statutory notice to vacate dated 5.01.2024 but the Tenant has not written to the Landlord to say that he is not willing to comply with the notice neither has he filed a Reference to the Tribunal in opposition to the said notice.
4. The Landlord has further deponed that he wishes to have vacant possession of the premises so that he can renovate the same and therein carry out his business.
5. I have perused the Landlord's notice to terminate tenancy dated 5.01.2024. the same is in the form prescribed under Section 4(2) of Cap 301 and is therefore a valid notice. The notice has expressed itself to be effective on 5.04.2024.
6. The affidavit of service sworn on 14.5.2024 clearly indicates that the Tenant was served with a notice dated 13.5.2024 (and not 5.01.2024) on 13.5.2024.



7. From a perusal of the record, I do note that the Landlord filed a Reference on 23.5.2024 on the grounds that the Tenant had refused and/or failed to honour the notice of termination of tenancy.
8. I further note that the notice of termination was to take effect on 5.04.2024. The problem with this effective date is that a notice to terminate tenancy cannot be effected midstream and can only take effect in the beginning of the month; i.e 1.04.2024. Even if I was to be wrong on this finding, I also note that the notice to terminate was served long after it had expired. This is so because the notice was to expire on 5.04.2024 but was served on 13.5.2024. A notice served after its date of expiry cannot take effect from the date already expired.

Section 4(4) of Cap 301 provides as follows:-

“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.”

9. In the circumstances of this case, I am of the view that it amounts to an abuse of the process of court to seek to enforce a notice to terminate tenancy dated 5.01.2024 and effective 5.04.2024 when the same notice was served upon the Tenant on 13.5.2024 long after the notice had expired.
10. In conclusion, the tenancy notice by the Landlord shall be of no effect.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25TH DAY OF SEPTEMBER, 2024.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Ms. Nduhukeri for the Landlord and in the absence of the Tenant.

Court: The Landlord is granted leave to file and serve a fresh notice within the next thirty days if he so wishes.

