



**Centre v Board of Directors of Divine Word Boys High School (Tribunal
Case E115 of 2022) [2023] KEBPRT 1246 (KLR) (18 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1246 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E115 OF 2022
CN MUGAMBI, CHAIR
JULY 18, 2023**

BETWEEN

KATANI MEDICAL CENTRE APPLICANT

AND

**BOARD OF DIRECTORS OF DIVINE WORD BOYS HIGH
SCHOOL RESPONDENT**

RULING

Introduction

1. The Tenant's notice of motion dated 28.11.2022 seeks orders restraining the landlord/Respondent from in any way interfering with the tenant's quiet enjoyment of the premises known as Katana Medical Centre pending the hearing and determination of the reference. The application has also sought for police assistance.
2. The Applicant's case is that on or about 30.9.2022 the Respondent served upon the tenant a termination notice wherein the tenant was to vacate the premises by 1.12.2022.
3. The tenant responded to the said notice by indicating that he was not willing to obey the said notice on the ground that the landlord did not supply them with enough proof of the said termination. The protestation of the tenant on various grounds have been set out in the supporting affidavit.
4. The landlord's case is that it has indeed served the tenant with a notice to terminate tenancy for the reason that it intends to expand the school and not because it desires to lease the suit premises to another tenant.
5. The landlord has deponed in its affidavit that the school population has grown and the Ministry of Education requires that some facilities be established for example the school needs more classrooms and laboratories.



6. It is also the landlord's case that the area occupied by the dispensary is the only area available for immediate conversion into a laboratory for the benefit of the students.

Analysis and Determination

7. The only issue that arises for determination is whether the tenant is entitled to the orders sought in its application.
8. I have noted that the landlord's notice to terminate tenancy dated 26.9.2022 seeks to terminate the tenancy on the grounds that the landlord wants to expand the school. The effective date in the notice is expressed to be 1.12.2022. I do find the notice to be a valid notice issued under the provisions of section 4(2) of [cap 301](#) and further meets the requirements of sections 4(4) and 4(5) of the said [Act](#).
9. The tenant in objection/opposition to the notice to terminate its tenancy opted to file a complaint under section 12(4) of [cap 301](#). The tenant's complaint was to the effect that;-
- “the landlord served the tenant with a notice which notice was never accompanied with any supporting documents and relevant consents and approvals for the said expansion. The termination is in bad faith and not properly addressed.”
10. Can the tenant resist the landlord's notice to terminate tenancy issued pursuant to the provisions of section 4(2) of [cap 301](#) by filing a complaint under section 12(4) of [cap 301](#)? I do not think so. Section 6(1) of [cap 301](#) provides as follows;-
- “A receiving party who wishes to oppose a tenancy notice and who has notified the requesting party under Section 4(5) of this Act that he does not agree to comply with the tenancy notice may before the date upon which such notice is to take effect, refer the matter to a Tribunal whereupon such notice shall be of no effect until and subject to the determination of the reference by the Tribunal.”
11. Instead of filing the reference to the Tribunal, the tenant opted to file a complaint under section 12(4) of [cap 301](#) which has no application to notices issued under section 4(2) of [cap 301](#).
12. The consequence of the tenant's non-compliance with the provisions of section 6(1) of the [Act](#) is that the notice took effect from the date therein specified as provided for under section 10 of [cap 301](#) which provides as follows:-
- “Where a landlord has served a notice in accordance with the requirements of section 4 of this [Act](#) on a tenant and the tenant fails within the appropriate time to notify the landlord of his unwillingness to comply with such notice or to refer the matter to a Tribunal, then subject to section 6 of this [Act](#), such notice shall have effect from the date therein specified to terminate the tenancy or terminate or alter the terms and conditions thereof or the rights or services enjoyed thereunder”
13. It is therefore clear from the above provisions of the law that the tenancy between the parties herein terminated on 1.12.2022 being the date therein specified and beyond that date, the tenant was no more than a trespasser in the suit premises.
14. In the circumstances, I do not find any merit in the complaint and the application filed by the tenant and the same are dismissed with costs to the landlord assessed at Kshs. 20,000/=.



15. The tenant is further ordered to render vacant possession of the suit premises within the next thirty (30) days from the date of this ruling failing which it shall be forcefully evicted from the said premises.

RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 18TH DAY OF JULY 2023.

HON. CYPRIAN MUGAMBI

CHAIRMAN

18.7.2023

In the presence of;-

Ms. Mwadumbo for the Landlord

Ms. Ayugi for the tenant

