



**Musonye v Enanga (Tribunal Case E100 of 2024)
[2024] KEBPRT 1336 (KLR) (Commercial and Tax) (29 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1336 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
COMMERCIAL AND TAX
TRIBUNAL CASE E100 OF 2024
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
JULY 29, 2024**

BETWEEN

VICTOR MUSONYE TENANT

AND

DANSON ENANGA LANDLORD

RULING

1. These proceedings were provoked by the notice of termination of tenancy by the landlord dated 20th December 2023. The same was titled “Notice To Vacate- Cosmetic Shop” The said notice read as here below:-

“Notice is given to you to cease to operate your cosmetic shop with effect from the 1st day of April, 2024. This is a three (3) months notice starting 1st January, 2024 to 31st March, 2024 to enable you have ample time to close shop but you will continue operating the pharmacy until further directed. The family wants to renovate and run their own business there. Looking forward to your full co-operation. Thanks in advance”.

2. On receipt of the notice, the Tenant filed the reference dated 29th May 2024. The same is anchored on Section 12(4) of the *Landlord and Tenant (shops, Hotels and Catering Establishments) Act* (Cap. 301) hereinafter “the Act”. The complaint by the Tenant was that:

“The Landlord has been harassing, intimidating me with threats of eviction by locking my business items without an order from the Rent Tribunal Court or any other court of law contrary to Cap. 301 Laws of Kenya. I request the Rent Tribunal court and OCS Turbo



Police Station to order the Landlord to stop harassing me with threats of eviction and reinstate me back to the business premises with all my business goods in good condition”.

3. Contemporaneously filed with the reference was the notice of motion application of the same date. The Tenant in the application principally sought that the landlord be ordered to allow him unfettered access to the demised premises to be ordered to recompense him for lost business at Kshs.10,000/- per day and that the landlord be compelled to accept rent for the premises in issue.
4. The Tenant also sought that any ensuing orders be effected by the OCS Turbo Police Station and that be paid costs of these proceedings. The Tenant finally urged his application through oral submissions rendered on the 10th July 2024.
5. On his part the landlord filed the Replying Affidavit sworn by himself on the 8th June 2024. He also filed a further Affidavit also sworn by himself on 16th July 2024 and we have taken regard of the same. Finally the landlord made oral submissions on 10th July 2024 in urging his defence to the Tenants application.
6. We also have appreciated the landlord’s case law which was supplied to us namely BPRT case NO. 154 of 2020 as consolidated with BPRT case No. 1 of 2021 (Nakuru). Moses Mugeria Njuki T/A Beehive Resort – vs- Joram Muya Waweru.
7. Having taken into account all the pleadings by the parties their oral submissions and case law cited , we are of the view that the issues for determination in this matter are the following:-
 - A. Whether the landlord’s notice of termination dated 20th December 2023 is lawful.
 - B. Whether the Tenant should be compensated for loss of income at Kshs.10000/- per day during the closure of his business.
 - C. Who should bear the costs of the suit.
8. At this point, we would wish to observe that in our view, this Ruling on the application dated 29th May 2024 will render the reference of even date fully compromised and therefore resolved. We shall therefore order that the reference be considered as determined in the same terms as the Application hereof.

Issued No. A- Whether the notice of termination of tenancy dated 20th December 2024 is lawful.

9. In determining that question, reliance is put on Section 4(2) of the Act. The same provides that:-

“ 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”.
10. The prescribed form alluded to is form A as provided for under Regulation 4(1) of the Regulations to the Act. The same provides that:-

“ A notice under Section 4(2) of the Act by a landlord shall be in form A.
11. The law also requires strict compliance with Section 4(4) of the Act to the effect that a termination notice cannot be for a period of less than two months. It is plain that the said notice did comply with this later requirement. However, we doubt that there was compliance with Section 7 of the Act. This Section requires the landlord to cite the grounds on which the termination notice is issued.
12. In our view, therefore the purported notice dated 20th December 2023 was not in compliance with Sections 4(2) and 7 of the Act and Regulations 4(1) of the Regulations to the Act and therefore



unlawful. In this we rely on the court of Appeal decision in the case of Manaver N Alibhai T/A Diani Boutique – vs- South Coast Fitness and Sports Centre Limited (1995) eKLR. The court of Appeal held that:-

13. “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 must also not take effect earlier than two months from the date of receipt thereof by the tenant. The notice must also specify the grounds on 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”.
14. We therefore declare the notice dated 20th December 2023 as unlawful and of no legal effect.

Issue No. B- Whether the Tenant should be compensated for loss of income at Kshs.10,000/- per day during the closure of his business.

15. We note that the Tenant never laid any claim for compensation for loss of income in his reference dated 29th May 2024. In any event the Tenant though claiming to have been running three (3) businesses, that is an Mpesa, cosmetics and pharmacy shop, his purported evidence of income were the extracts marked VM-1. It is not clear as to where the statements had been extracted from and also why there was absence of income from the mpesa business.
16. If indeed the Tenant was earning Kshs.10,000/- per day, that would average a monthly income of Kshs.300,000/- per month. That is taxable income which should have been structured in elaborate accounts showing among others payment of tax on the income to the Kenya Revenue Authority (KRA) None of such evidence was presented to the court.
17. Indeed the Tenant was suspiciously very quiet on the question of the alleged income in his submissions in court. We are therefore not convinced that the Tenant lost such colossal amounts of money during the lockdown of the demised premises. The landlord also asserted that the Tenant only runs two (2) businesses and not three and that only one was affected by the closure. This assertion was not rebutted by the Tenant despite having been granted leave to answer the landlord’s replying affidavit.
18. We therefore decline the claim for compensation for the alleged loss of income as the same was not proved on a balance of probabilities. Section 107 of the Evidence Act provides that:-

“Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”.
19. In our view, the Tenant never asserted the existence of the alleged income in the primary pleading herein which is the reference and there was also no evidence presented to afford such a determination. We therefore decline that prayer and dismiss the same.
20. We however note that the Tenant was able to demonstrate that the cosmetics shop was closed for about three (3) months by the landlord without the authority of the court. This assertion was consistent all the way from the reference, the application thereof and the submissions in court. This is an assertion which in our view the landlord was not able to dislodge.
21. The landlord had no authority of the court to lockup the premises and the action was in pursuit of an illegal objective. The closed Beauty cosmetics shop accrues rent agreed at Kshs.8,000/-. We therefore



determine that the Tenant is not liable to pay the same for the three months that the shop was closed. That amounts to Kshs.24,000/-. The same will be offset from rent payable to the landlord.

Issue No. C. Who should bear the costs of this suit.

22. Costs are largely a discretionary responsibility which should however be judicious. In this matter, the Tenant has succeeded in having the notice of termination declared unlawful. On the other hand, he has failed in his pursuit to get compensation for alleged loss of income. We direct that each party bears own costs.
23. In the final analysis, the orders that commend to us are the following,
- i. That the reference and application both dated 29th May 2024 are allowed to the extent that the Tenant shall be accorded quiet possession of the demised premises.
 - ii. That the Tenant shall not pay rent on the demised premises for the time that the same was locked up for three (3) months at Kshs.24,000/-. The same to be offset from the rent payable to the landlord.
 - iii. That each party shall bear own costs of this suit.

Those are the orders of the court.

RULING DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 29TH DAY OF JULY 2024.

**HON. NDEGWA WAHOME MBS HON. JOYCE MURIGI - PANEL CHAIRPERSON MEMBER
BUSINESS PREMISES RENT TRIBUNAL**

Ruling delivered in the presence of Mr. Alovi for the Landlord and the Tenant in person.

