



**Kalenjin Auto and Hardware Limited & another v Aya Limited (Tribunal
Case E037 of 2024) [2024] KEBPRT 1679 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1679 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E037 OF 2024
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
OCTOBER 29, 2024**

BETWEEN

KALENJIN AUTO AND HARDWARE LIMITED 1ST TENANT

GURDIT SINGH SHOP 2ND TENANT

AND

AYA LIMITED RESPONDENT

RULING

1. This Ruling relates to the notice of preliminary objection dated 13th May 2024. We also note that there was a further notice of preliminary objection dated the 16th May 2024.

The former was on the grounds that:-

- i. That the notice to terminate the tenancy dated 25th January 2024 before this Honourable Court is fatally defective, incompetent, bad in law and should be struck out with costs.
- ii. That the notice to terminate Tenancy dated 24th January 2024 be struck out for being duplicitous.
- iii. That the notice to terminate tenancy dated 25th January 2024 be struck out for being an abuse of the court process.
- iv. That the notice to terminate Tenancy dated 25th January 2024 contravenes the provisions of Sections 4 and 7 of the [landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) chapter 301 Laws of Kenya.

2. This notice of preliminary objection was in relation to or was filed in case No. E052 of 2024. On the other hand, the notice of preliminary objection dated 16th May 2024 was filed in case No. E039/2024 and was on the following grounds:-



- i. The termination notice dated 17th January 2024 before this Honourable court is fatally defective, incompetent bad in law and should be struck out with costs.
 - ii. That the notice to terminate tenancy dated 17th January 2024 contravenes the provisions of Section 4 and 7 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (Cap. 301) Laws of Kenya.
3. On the 24th June 2024, this court with the concurrence of all the parties consolidated case No. E037, E038, E039 and E052 all of 2024 with case file no. E037 of 2024 being the lead file. MS Kalenjin Auto and Hardware Ltd were to be the 1st Tenant/applicant, Mr. Gurdit Singh shop the 2nd Tenant/applicant and M/S Aya Ltd the Landlord/Respondent.
4. The parties further agreed to canvas the notices of preliminary objection by way of written submissions. The Tenants filed their submissions dated 5th July 2024 whereas those of the Landlord are dated the 10th September 2024. Earlier on the 3rd September 2024 the landlord had withdrawn the notices of termination relating to case no. E039 of 2024 which also effected case No. E037 OF 2024. It expressed its intention to proceed with case nos. E038 and E052 of 2024.
5. Without much ado, we confirm the withdrawal of case No. E037 of 2024 and E038 of 2024 and the same are marked as settled and the respective files ordered closed. For their pain in filing the attendant responses, the Tenants are awarded costs at Kshs.10,000/- each on both files to be offset from the rent payable to the landlord.
6. We have perused the notices of termination dated 25/5/2024 and are of the view that the same are in compliance with section 4(2), 4(4) and 7 of the Act and Regulation 4(1) of the Regulations to the Act.
7. It is not justicious for us at this stage dwell on the merits of the termination notice, the timelines and the legitimacy of the grounds thereon on the foundation of a preliminary objection. If the landlord had not issued a notice in the prescribed form, had not met the timelines of the notice at 2 months or not stated the grounds of termination, then the Locus Classicus case of Mukisa Biscuits Manufacturing Company Ltd -vs- Westend Distributors Ltd (1969) EA 696 would have found application.
8. In our view, the legitimacy of the ground of termination is a matter of evidence and we are unable to infer concurrence by the parties on the facts surrounding the issues before the court.
9. To fortify that position, we merely need to quote a passage from the case of Mukisa Biscuits Supra where Sir Charles Newbold JA had this to say:-

“A preliminary objection is in the nature of what sued to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.....”
10. It is our further view that the landlord cannot be blocked from access to the sit of justice for an error that was admitted and corrected. It is on record that the offending notices of termination dated 17th January 2024 have been withdrawn and with it fell the references thereof. Indeed there is also on record, the notices of termination dated 25th January, 2024 and references have been filed in answer to the same and which are dated 26th March 2024. Our constitution requires of us to administer substantive justice and largely avoid technicalities. It is now trite, that courts should be motivated by resolving the issues



before it with finality than focus preliminary and secondary issues unless the proceedings before it. Article 159 (2) (d) thereof provides that:-

:Justice shall be administered without undue regard to procedural technicalities”.

11. Therefore looking at the totality of all the pleadings by the parties, the submissions and case laws cited thereof, we are not persuaded that the notices of preliminary objection dated 13th May 2024 and 16th May 2024 have any merit and we dismiss the same. The costs thereof shall abide the outcome of the references herein.
12. It will be appreciated that file no. E037/2024 which was the lead file in this matter has been closed. File no. E039/2024 has also been withdrawn. We would therefore direct that file no. E038/2024 and E052/2024 shall be heard together with file no. E038/2024 being the lead file.
13. In the final analysis, the orders that commend to us are the following:-
 - i. That the notices of preliminary objection dated 13th May 2024 and 16th May 2024 are dismissed.
 - ii. That file nos. E037 and E039 both of the year 2024 are ordered closed and the landlord shall pay costs to the tenants at a total of Kshs.10,000/- each for both files to be offset from rent payable to the landlord.
 - iii. That file nos.E038/2024 and E052/2024 shall be heard together with file no. E038/2024 being the lead file.
 - iv. That the costs on the notices of preliminary objection shall abide the outcome of the references herein.
 - v. Those are the orders of the court.

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

HON. NDEGWA WAHOME MBS - CHAIRPERSON

HON. JOYCE MURIGI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of M/S Wahome for the Applicant and Mr. Owino for the Respondent.

HON. NDEGWA WAHOME MBS - CHAIRPERSON

HON. JOYCE MURIGI - MEMBER

