



**Nzau & another v Sila (Tribunal Case E066 of 2023 & E1029 of 2022
(Consolidated)) [2023] KEBPRT 368 (KLR) (7 June 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 368 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E066 OF 2023 & E1029 OF 2022 (CONSOLIDATED)
A MUMA, VICE CHAIR
JUNE 7, 2023**

BETWEEN

ANTONY MAKAU NZAU 1ST LANDLORD

CECILIA KATUNGE NZAU 2ND LANDLORD

AND

SIMON SILA TENANT

RULING

A. Parties And Their Representatives

1. Antony Makau Nzau & Cecilia Katunge Nzau are the administrators of the estate of Naomi Katheke Nzau (Deceased) and the owner of the Mama Maziwa Premises on Plot No 126 Kitui Township.
2. The Firm of Janet, Jackson & Susan LLP Advocates represents the Landlords.
3. Simon Sila is the Tenant of the said premises.

B. Background Of The Dispute

4. On October 17, 2022, the Landlords served the Tenant with a termination notice with effect from January 1, 2023.
5. In response to the notice to terminate tenancy, the Tenant filed a reference dated November 1, 2022 before this Tribunal opposing the notice of termination by the Landlord which was allocated a Case No E1029 of 2022.
6. The Landlords filed a reference and an application dated January 20, 2023 and this Tribunal ordered that the same be served for hearing on February 23, 2023.
7. The Tenant filed a Replying affidavit dated February 1, 2023.



C. Claim And Defence

8. The Landlords claim that they served the Tenant with a notice of termination dated October 17, 2022 for the reason that they intended to take over the premises for personal business use for a period of more than one year.
9. Further, they claim that the Tenant has declined to move out despite the lapse of the termination period and that he has not opposed the said termination notice.
10. It is the Tenant's case that they filed a reference dated November 1, 2022 in opposition to the notice of termination dated October 17, 2022.

D. Issues For Determination

11. From the foregoing, the issue that falls for determination is;
Whether the Landlords' notice of termination dated October 17, 2022 is valid.

E. Analysis And The Law

12. Section 4(2) of the [Landlord & Tenant \(Shops, Hotels & Catering Establishments\) Act](#) explicitly provides that there can be no termination and alteration of the terms and conditions of a controlled tenancy other than provided therein. It 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.'
13. Further, Section 4 (4) provides that;

' 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.'
14. The Court in the case of [Manaver N Alibhai T/A Diani Boutique vs South Coast Fitness & Sports Centre Limited, Civil Appeal No 203 of 1994](#) stated as follows;

' 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 shall not take effect earlier than 2 months from the date of receipt thereof by the tenant. The notice must also specify the ground upon 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.'
15. It is evident from the documents filed by both the parties herein that the Landlord complied with the provisions of Section 4 (2) and (4). The Landlords issued the notice of termination dated October 17, 2022 which was to take effect on January 1, 2023.
16. Additionally, the Landlords indicated that the reason for termination was for personal business use for more than one year in accordance with Section 7 of the Landlord & Tenant (Shops, Hotels & Catering



Establishments) Act Cap 301 which provides that some of the grounds upon which a Landlord may terminate a tenancy include;

- ' g) Subject as hereinafter provided, that on the termination of the tenancy the landlord himself intends to occupy for a period of not less than one year the premises comprised in the tenancy for the purposes, or partly for the purposes, of a business to be carried on by him therein, or at his residence.'

17. In giving effect to this provision, the Courts have emphasized that before the Landlord is granted vacant possession, they have to satisfy the Court that the intention is genuine and not colorable.

18. In the case of *Fisher v Taylors Furnishing Stores Ltd [1956] 2 All ER 78*, the Court observed that;

- ' There must, therefore, be an intention and it must be an intention which in point of time is related to the termination of the current tenancy. It seems to me that the intention must be to do one of the following things: (i) to demolish the premises comprised in the holding; or (ii) to reconstruct the premises comprised in the holding; or (iii) to demolish a substantial part of the premises comprised in the holding; or (iv) to reconstruct a substantial part of the premises comprised in the holding; or (v) to carry out substantial work of construction on the holding; or (vi) to carry out substantial work of construction on a part of the holding

If the landlord proves an intention to do one of those things, and to do it on the termination of the current tenancy, he must then prove that he could not reasonably do it without obtaining possession of the holding.'

19. Although the notice of termination dated October 17, 2022 is valid, this Tribunal is not convinced that the Landlord has satisfied the above-mentioned requirements in demonstrating their settled and firm intention to require vacant possession for the said personal business use. No evidence has been adduced to support the assertions by the landlord.

20. On this basis therefore, I find that there is no need to terminate the tenancy.

F. Orders

- a. The upshot is that the Tenant's reference dated November 1, 2022 in opposition to the notice of termination is hereby allowed.
- b. The Landlords' reference and application dated January 20, 2023 are hereby dismissed.
- c. The Tenant shall keep paying rent as and when it falls due.
- d. The Landlord shall be at liberty to issue a fresh notice at a time when they are ready to provide proof of the intention to utilize the premises.
- e. Each party shall bear their own costs.

HON. A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

JUDGEMENT DATED, SIGNED AND DELIVERED BY HON. MUMA THIS 7TH DAY OF JUNE 2023 IN THE PRESENCE OF MUNYAKA FOR THE LANDLORD AND SIMON SITA THE TENANT IN PERSON.



HON. A MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

