



**Kariuki & 2 others v Lavington Shopping Complex Limited (Tribunal
Case E501 of 2024) [2024] KEBPRT 890 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 890 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E501 OF 2024
A MUMA, MEMBER
JULY 4, 2024**

BETWEEN

SIMON KARORI KARIUKI 1ST TENANT

NYONGESA ALBERT WAFULA 2ND TENANT

EMILY WANGARI KIMOTHO T/A MEDTON CHEMIST 3RD TENANT

AND

LAVINGTON SHOPPING COMPLEX LIMITED LANDLORD

RULING

A. Parties and their Representatives

1. The Applicants, (the “Tenants”) are the lawful tenants of shops on property known as Title Number 422/2, Wangige, Kabete Sub County, Kiambu County (the “suit premises”).
2. The Firm of Kinyanjui, Kirimi & Company advocates represents the Tenant in this matter.
3. The Respondent, Lavington Shopping Complex Limited is the registered proprietor of the suit premises and hence the Lan (the “Landlord”), is the registered proprietor of the suit premises and hence the Landlord.
4. The firm of Kang’ethe & Mola Advocates represents the Landlord in this matter.

B. Background of the Dispute

5. Through a Reference and an Application dated 24th April 2024 canvassed through Certificate of Urgency of even date, the Tenants moved this Honourable Tribunal seeking the following orders inter-alia: orders certifying the matter as urgent, restricting the Landlord from evicting, removing, distressing and harassing the them.



6. Upon perusal of the Application, this Honourable Tribunal on 29th April 2024 issued interim orders prohibiting the Landlord and his servant and/or agents from evicting the Tenants and from interfering with the Tenants' quiet occupation and lawful enjoyment of the suit premises pending interpartes hearing and determination of the Tenants' Reference and application.
7. Further, the Tribunal ordered that the Reference and Application be served upon the Landlord for hearing on 15th May 2024 and a return of service be filed.
8. In response to the Tenants' Application, the Landlord filed a Replying Affidavit dated 14th May 2024.
9. The Tenant filed submissions in support of their Reference and Application dated 29th May 2024 and the Landlord subsequently filed his submissions dated 3rd June 2024.
10. It is the Tenant's Reference and Application dated 24th April 2024 that is the subject of this ruling.

C. Tenant's Case

11. The 1st, 2nd and 3rd Tenants aver that they are periodic Tenants who have been in occupation of the suit premises for a period of Twenty, Fifteen and Ten years respectively and that they have been dutifully and diligently paying his rent to the Landlord and therefore, are not in any arrears.
12. It is the Tenants' case that the Landlord issued them with a notice to vacate the suit premises dated 29th February 2024 which they received on 6th March 2024 and which was meant to take effect on 30th April 2024.
13. The Tenants aver that they have made improvements on the premises with the consent of the Landlord and sought business permits for the year 2024. Therefore, evicting them from the suit premises would be unfair to them and cause them irreparable damage and loss.
14. The Tenants further submit that the notice of termination issued by the Landlord falls short of the requirements of Section 4 (2) which provides for termination of protected tenancies and is therefore illegal.

D. Landlords' Case

15. The Landlord vide a Replying affidavit sworn by Irene Nyakio Kinuthi, a director of the Landlord, avers that in anticipation of the long-term plan for the suit premises, the directors of the Landlord passed a resolution to renovate and develop the suit premises to modern standards.
16. Consequently, the Landlord served upon the Tenants a two-month notice to vacate the premises dated 29th February 2024 following which the Tenants filed the subject Reference and Application.
17. It is the Landlord's case that due to the Tenants' refusal to grant vacant possession, it has and continues to incur enormous amounts of resources in terms of preparation of drawings and plans for the soon to be renovations and development.

E. Jurisdiction

18. The Jurisdiction of this Honourable Tribunal is not contested by either party and therefore is not in dispute.



F. List for Issues for Determination

19. Having carefully perused the Pleadings presented before this Honourable Tribunal by the parties, it is therefore my respectful finding that the sole issue that falls for determination is; Whether the Landlord's notice of termination dated 29th February 2024 is valid.

G. Analysis and Determination

20. The Landlord has submitted that it wishes to renovate the premises and that such renovation cannot be carried out without acquiring vacant possession of the suit premises. To buttress its argument and reasons for termination as required under section 7 of [Cap 301](#), the Landlord has provided an approval for renovation from the County Government of Kiambu.
21. Be that as it may, the Tenants have challenged the validity of the notice of termination. Therefore, this Tribunal must address itself as to whether the procedure for evicting protected tenants under [Cap 301](#) was complied with.
22. The procedure of terminating a controlled tenancy is well provide under section 4 (2) of the [Landlords and Tenants \(Shops, Hotels and Catering Establishments\) Cap 301](#) Laws of Kenya. The said provision 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.

23. 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:

Provided that—

- i. where notice is given of the termination of a controlled tenancy, the date of termination shall not be earlier than the earliest date on which, but for the provisions of this Act, the tenancy would have, or could have been, terminated;
 - ii. where the terms and conditions of a controlled tenancy provide for a period of notice exceeding two months, that period shall be substituted for the said period of two months after the receipt of the tenancy notice;
 - iii. the parties to the tenancy may agree in writing to any lesser period of notice.
24. I have carefully considered the terms of the tenancy between the Tenants and the Landlord. It is clear that the tenancy relationship is a controlled tenancy whose termination procedure should be in line with the provisions of [Cap 301](#).
25. I have perused notice of termination dated 29th February 2024 and note that the same is in the form of a letter and not in the prescribed form, Form A, provided for under the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) \(Tribunal\) \(Forms and Procedure\) Regulations](#).



26. Additionally, I note that the notice was served upon the Tenants on 6th March 2024 and was to take effect on 30th April 2024. This period falls short of the two-months' notice period provided under Section 4 (4) of Cap 301 indicate above.
27. In light of the above, it is my considered opinion that the notice of termination dated 29th February 2024 is invalid for want of both form and substance.

H. Orders

28. In the upshot the Tenant's Reference and Application dated 29th April 2024 are hereby allowed in the following term;
- a. Tenants to remain in the premises and to pay rent as and when it falls due;
 - b. he Landlord is at liberty to issue a fresh notice; and
 - c. Each party to bear their own costs.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

**RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 4TH DAY OF JULY 2024
IN THE PRESENCE OF WAMBUI FOR THE LANDLORD AND KIRIMI FOR THE TENANTS**

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

