



**Ambundo v Tailor (Tribunal Case E028 of 2023)
[2024] KEBPRT 858 (KLR) (5 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 858 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E028 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
JULY 5, 2024**

BETWEEN

JOHN BRIAN AMBUNDO TENANT

AND

DR. ANIL TAILOR LANDLORD

RULING

A. The Dispute Background

1. The tenant moved this tribunal vide a reference under Section 12 (4) of Cap 301 dated 8th May, 2023 with a complaint that the landlord and/or his servants issued a defective notice demanding him to vacate the suit premises by 10th May, 2023 without following due process.
2. The tenant/applicant filed a Notice of Motion under a Certificate of Urgency dated 8th May, 2023 in which he sought for the following orders; -
 - I. That the application be certified urgent.
 - II. That the court grants an order restraining the defendant/landlord herein, his agents, servants or employees from evicting, harassing and/or in any other way interfering with the applicant, his agents, servants and or employees from peaceful and quiet occupation and possession of the suit premises situate at RAM TRAINING COLLEGE pending the hearing and determination of the application and reference/suit.
 - III. That the officer in charge of Kisii Central Police Station do ensure compliance of the orders.
 - IV. That the honorable court be pleased to find that the Notices to vacate served on the applicant are defective.
 - V. That the cost of the application be provided for.



3. The applicant swore a supporting affidavit of even date wherein he deposes as follows; -
 - i. That an illegal notice/demand to vacate was issued/served upon him to vacate the suit premises by 10th May, 2023 notwithstanding existence of a valid lease agreement that is set to lapse in the year 2026. A copy of the illegal demand notice is annexed as “JBA-1”.
 - ii. That he is the lawful tenant of the suit premises situate at RAM TRAINING COLLEGE within Kisii Township in Kisii County for a period of 5 years which is set to lapse in the year 2026. A copy of the Tenancy Agreement is annexed as “JBA-2”.
 - iii. That he has been issued with a defective notice to vacate by 10th May, 2023 and that the landlord has stated that he will not accept and/or collect money from him and is now harassing, intimidating and/or threatening him through Auctioneers with carting away his goods and tools of trade unless he vacates the suit premises.
 - iv. That there is no outstanding rent arrears to warrant the behavior of the landlord as he has religiously been paying rent when due without fail save when the respondent/landlord told him not to.
 - v. That he has lost so much in terms of business due to constant interference from the respondents and their agents.
4. On 11th May, 2023 the court granted temporary orders of injunction against the landlord pending hearing inter-partes.
5. The application is opposed vide a replying affidavit dated 20th June, 2023 in which the landlord deposed as follows; -
 - i. That contrary to the applicant’s allegations and depositions in his affidavit, the tenant/applicant is in arrears to the tune of Ksh. 181,716 as at June 2023. Rent statements/schedule/book is annexed as “ART1”.
 - ii. That the applicant has refused to pay the rent owed in spite of his many acknowledgments of his indebtedness and promises to repay the respondents.
 - iii. That prior to filing of this reference, the parties held discussions whereby the tenant already agreed to vacate the premises owing to rent arrears outstanding, contrary to the averments in the supporting affidavit filed by the tenant.
 - iv. That pursuant to the discussions held by the parties herein, the landlord wrote an informal letter to the tenant, which he has in bad faith filed before the tribunal construing the same as a notice of termination.
6. The landlord/respondent also filed grounds of opposition dated 20th June, 2023 which was dealt with by way of written submissions and a ruling was delivered on 24th November 2023 and the grounds of opposition were dismissed.
7. On 24th November 2023, the court ordered that the application and reference be canvassed by way of written submissions. The tenant complied by filing his written submissions dated 18th April 2024.
8. We note that Counsel for the landlord, at a court hearing on 9th May 2024 stated that he had filed his written submissions but the same is not available in the court file or the online portal. We shall go ahead to consider the written submissions by the tenant/applicant only as we deal with the issues for determination.



B. Issues for Determination

9. The following are the issues for determination;
 - a. Whether the termination notice dated 13th April 2023 issued by the landlord is valid.
 - b. Whether the tenant/applicant is entitled to the orders sought in the application dated 6th June, 2023.
 - c. Who bears the costs of the application?

Issue (a) Whether the termination notice dated 13th April 2023 issued by the landlord is valid.

10. The landlord/respondent herein issued a notice to terminate tenancy dated 13th April 2023 to the tenant which is annexed as “JBA-1” was due to take effect on 10th May 2023.
11. In the case of Manaver N Alibhai t/a Diani Boutique – vs- South Coast Fitness & Sports Centre Limited Civil Appeal No. 203 of 1994 it was held as follows: -

“The Act lays down clearly 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.”

12. A termination of tenancy notice ought to comply with the dictates of Section 4(2) of Cap 301.
13. Upon examining the termination notice dated 13th April 2023, served upon the tenant herein, we find that the said notice is not in the prescribed form and is therefore invalid and unlawful.

Issue (b) Whether the tenant/applicant is entitled to the orders sought in the application dated 8th May, 2023.

14. The tenant/applicant approached this tribunal seeking protection from interference with his tenancy by the landlord/respondent together with a declaration that the notice to terminate tenancy served him is defective.
15. As already observed above, the notice to terminate tenancy dated 13th April 2023 has been found to be defective and unlawful.
16. The landlord in his replying affidavit dated 20th June, 2023 has sworn that the tenant herein is in arrears of rent to the tune of KES. 181,716 as at June 2023. The landlord has annexed a rent statement to the same affidavit showing proof of the alleged rent arrears.



17. In Samuel Kipkrori Ngeno & Another – vs- Local Authorities Pension Trust (Registered Trustees) & Another (2013) e KLR 12, the court stated in paragraph 9 as follows:

“A tenant’s first and main obligation is to pay rent as and when it becomes due, for the landlord has the right to an income from his investment. Why would a tenant allow himself to fall into such huge arrears of rent?”

18. The foregoing case provides sufficient guidance that the landlord is entitled to rent payment from the tenant. The tenant herein has not filed any evidence to prove that he has been paying rent for the period in dispute and states in his written submissions and supporting affidavit that he has no outstanding rent.
19. This tribunal has no reason to disbelieve the landlord. We shall order that the tenant/applicant settles the claimed rent arrears owing to the landlord, failure to which the landlord shall be at liberty to recover the same using lawful means.

Issue (c) Who bears the costs of the application?

20. As regards costs, the same are in the Tribunal’s discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall order costs to the tenant/applicant in view of the fact that the landlord/respondent is wrong in failing to follow the provisions of Cap. 301, Laws of Kenya in so far as termination of tenancy is concerned.

C. Orders

21. In conclusion, the following final orders commend to us;
- The landlord’s notice to terminate tenancy dated 13th April 2023 is declared invalid and unlawful.
 - The application dated 8th May 2023 is hereby allowed as prayed.
 - The reference dated 8th May 2023 is settled in terms
 - The tenant shall pay any rent arrears owing to the landlord failure to which the landlord shall be at liberty to recover the same using lawful means.
 - The landlord is at liberty to issue a notice to terminate tenancy in the prescribed form in accordance with Section 4(2) of Cap 301 Laws of Kenya.
 - Costs of KES. 15,000 to the tenant/applicant to be offset against the rent account.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH JULY 2024

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE

MEMBER

In the absence of:**



Parties

