



**Munge v Mukoyani (Tribunal Case 176 of 2023)
[2024] KEBPRT 1100 (KLR) (10 July 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1100 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 176 OF 2023
P MAY, MEMBER
JULY 10, 2024**

BETWEEN

PETER MUNGE TENANT

AND

BRIAN MUKOYANI LANDLORD

JUDGMENT

1. The parties herein entered into a tenancy agreement sometimes in May, 2023. The terms of the agreement were reduced into writing and by all standards were explicit. The landlord issued the tenant with a notice to terminate tenancy dated 24th October, 2023 pursuant to section 4(2) of *Landlord and Tenant (Shops, hotels and catering establishments) Act*, Cap. 301 on the grounds that the tenant had defaulted in paying rent and had accumulated arrears amounting to KShs. 11,000. The notice was to take effect on 1st January, 2024.
2. The tenant was opposed to the notice of termination and filed the reference dated 17th November, 2023. The reference was fixed for hearing on 7/5/2024 where each party testified in support of their respective positions. The Tribunal will briefly summarize the respective cases.

Summary of the tenant's case:

3. The tenant admitted to having entered into a tenancy agreement with the landlord for the lease of the demised premises. It was the tenant's testimony that the lease was for a term of two years and the agreed rent was KShs. 5,500. The tenant stated that they were up to date in the payment of rent including the amount incurred for power reconnection and repairs undertaken in the demised premises. The tenant during cross examination maintained that the repairs were sanctioned by the landlord through their agent one Masai Nzula whom they also submitted the receipts to. The tenant therefore prayed to have the notice quashed.



Summary of the landlord's case

4. The landlord admitted to the existence of tenant- landlord relationship. The crux of the dispute being on the alleged default in payment of rent, the landlord stated that the tenant had defaulted in paying rent from the month September 2023 to November 2023 hence was in arrears amounting to Kshs. 22,000. On the repairs undertaken, the landlord stated that he did not sanction the same. On cross examination, the landlord denied knowledge of one Masai Nzula and was categorical that he had never appointed to be his agents. He therefore stated that he was not his agent and at no time had he received money from him.

Analysis

5. At the close of the hearing, the parties elected to file written submissions to buttress their respective positions. I have considered the evidence on record and submissions. The sole issue for determination is the validity of the notice to terminate tenancy dated 24/10/2023.
6. In determining the validity of the said notice, the Tribunal shall consider two aspects: the formal requirements of a notice for termination of a tenancy agreement and the Landlord's grounds for termination of the tenancy.
7. Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 Laws of Kenya (hereinafter referred to as the "Act") 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.”

8. Additionally, 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, unless the terms and conditions of the tenancy provide for a period exceeding two months or the parties to the tenancy agree in writing to a lesser period of notice.
9. The two requirements therefore for a valid notice of termination of the tenancy is first, that the notice shall be in the prescribed form and secondly, that the notice shall not take effect until after expiry of two months, or such notice period as may be agreed by the parties. This was emphasized in the case of; *Munaver N Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited* [1995] eKLR, where the Court of Appeal at Mombasa in finding that the notice of termination of the tenancy was void for failing to comply with Section 4 of the Act 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 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.”

10. The notice to vacate was issued by the Landlord on 24/10/2023, and required the Tenant to vacate the premises by 1st January, 2024. I note that the duration of the notice exceeds the two-month period



as prescribed by the Act. Additionally, according to Section 4(2) mentioned above, the notice of termination of tenancy should be the prescribed form, specifically Form A, as provided for in the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966. The notice herein was in the prescribed form. In terms of form, the landlord complied with the legal provisions.

11. The Act provides for the grounds on which the Landlord may seek to terminate the tenancy in Section 7. The grounds stated under this provision and which are applicable herein include;
 - i. that the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable;
12. The landlord in the notice stated that the tenant failed to make rent payment and had fallen into arrears. It is trite law that he who alleges must prove. This is in accordance with the Evidence Act of Kenya in Section 107, which places a burden of proof on the person who desires any court to give judgment as to any legal right or liability, which is dependent on the existence of facts, which he asserts.
13. The landlord has a statutory duty of keeping a rent book. In the present proceedings the landlord has not attached the rent book he maintained in regards to the tenant herein. The landlord has maintained that he never received any payment through Mpesa. The tenant however indicated that they made payments to one Masai. The payment according to the text message shared was made around the same time parties entered into an agreement. The coincidence supports the tenant's assertion.
14. In making a determination of the rent arrears due, the Tribunal has scrutinized the invoice attached. On the power bill paid by the tenant, the said fell within their obligations. The reconnection fee having been paid around the same period; the Tribunal exempts the landlord from the said cost of Kshs. 2500.
15. It is clear from the above that the tenant has partly succeed in challenging the validity of the notice issued by the landlord. it cannot be overemphasized that the landlord is the author of his own misfortune by failing to keep a rent book. costs being issued at the discretion of the tribunal, the present proceedings were precipitated by the landlord's failure to keep proper records.
16. In conclusion, the final orders which commend itself in this case are:-
 - a. The landlord's notice of termination of tenancy dated 24/10/2023 is hereby quashed.
 - b. The tenant shall pay the landlord the sum of kshs. 3,450/= being rent as it was erroneously computed to be incurred by the landlord and any outstanding rent arrears within 14 days from the date hereof.
 - c. The tenant is awarded costs equivalent to one-month rent.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 10TH DAY OF JULY, 2024.

HON. PATRICIA MAY - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the absence of parties

