



**Musyoka v Omondi (Tribunal Case E294 of 2023)  
[2024] KEBPRT 686 (KLR) (Civ) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 686 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E294 OF 2023  
N WAHOME, CHAIR  
APRIL 25, 2024**

**BETWEEN**

**FARIDAH NGINA MUSYOKA ..... TENANT**

**AND**

**FELIX OMONDI ..... LANDLORD**

**RULING**

1. The Applicant filed the Reference and notice of motion Application both dated 27.11.2023 on the grounds that the Respondent had issued her a verbal termination notice. She was required to vacate the demised premises by the 30.11.2023. The suit was said to be founded under Section 12(4) of the Landlord and Tenant (Shops, Hotels and Catering Establishments Act) (Cap 301) of the Laws of Kenya.
2. In support of her Reference and the Application, the Tenant in confirmation of the verbal termination notice attached annexure “FNM1” where the landlord had made this communication to her;  
  
“I gave you notice to vacate my house by 30.11 (this month). Please take note that this has not changed. Am sending you back the rent you have sent to me.”
3. This discourse between the parties was on the 20.11.2023 and the Applicant moved this court on the 27.11.2023 challenging the legality of the verbal notice to terminate her tenancy and at the same time seeking the court’s intervention so that she continued to enjoy quiet possession of the demised premises.
4. In response to the Reference and Application both dated 27.11.2023, the Respondent filed his replying affidavit dated 9.2.2023. In it, he asserted that;-



- i. The Tenant was operating an illegal business without any authorization by the relevant authority.
  - ii. She had breached the lease agreement by operating a wines and spirits outlet which has extended to a bar, when she is supposed to run a groceries business.
  - iii. The Applicant's business has become a health hazard and a security risk to other residents occupying residential houses at the premises who had complained to him (annexure "1").
  - iv. He had tried to work on an amicable solution with the Applicant in vain.
  - v. He therefore sought for this court's intervention to have the premises ordered closed with immediate effect.
5. Thereafter, the Applicant filed the "replying Affidavit" dated 17.2.2024 and submissions dated 19.2.2024. In them, she countered all the Landlord's assertions in his said replying affidavit. On his part, the Landlord filed his submissions dated 19.2.2024 and reiterated his averments in the Replying affidavit sworn on the 9.2.2024.
  6. It is my considered view that the Reference and Application herein turns on only one issue. That is whether, the Respondent's verbal notice to vacate and which was also communicated by way of a text message through the phone was lawful.
  7. There is no dispute that the tenancy herein is a controlled tenancy and therefore governed by the Act. That is to say, Cap 301. This law has laid down a very elaborate regime on resolution of disputes between parties when they arise. In this matter, once the Landlord presumed that the Tenant had breached any covenant in the tenancy, whether written or inferred, the law provides a clear mechanism on how to seek remedy.
  8. Section 4(2) of 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."
  9. Further, Regulation 4(1) of the Regulations to the Act provide an elaborate format to be strictly complied with in issuing such notice. It provides that;-
 

"A notice under Section 4(2) of the Act by a tenant shall be in form A in the schedule to these Regulations."
  10. The courts have also settled the law on the pre-requisites of a valid termination notice to be effective. In the case of; *Narshidas & Company Ltd v Nyali Air Conditioning & Refrigeration Services Ltd* Civil Appeal No. 205 of 1995, the Court held that;-
 

"The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 of the Laws of Kenya 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 and the notice must also specify the grounds 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. The notice to quit purportedly relied on by the defendant in this appeal is by no means a notice which in anyway complies with Form A as prescribed in the Act. Such notice can only have been given pursuant to the provisions of Section 7(1)(g) of the Act. The notice to quit given or issued by the defendant was clearly void and had no effect in law or the plaintiff's tenancy and the plaintiff was under no legal duty or otherwise to react to it."

11. I have noted that in his replying affidavit, the Respondent has not denied having issued the verbal to notice vacate. He is also quiet on the message he wrote the Tenant to quit the premises. Indeed, the reversal of the rent paid to him confirmed the fears of the Applicant of an imminent eviction from the premises.
12. The upshot of all these is that, the notice of termination issued by the Respondent to the Applicant was illegal and of no legal effect nor consequence. The Applicant was therefore right to move the court for the protection of her rights and this court has an obligation in the circumstances of this case to grant her the reliefs sought.
13. Pursuant to Section 27 of the [Civil Procedure Act](#) and in particular the proviso thereof, I would grant the costs of this suit to the Applicant. I therefore make the following final orders; -
  - i. That the Reference and Application dated 27.11.2023 are allowed in the terms that the Applicant shall be allowed quiet possession of the demised premises.
  - ii. That the notice of termination made verbally and by a text message through the Respondent's phone is declared illegal and of no legal effect nor consequence.
  - iii. That the Landlord shall pay the Tenant costs assessed at Kshs. 10,000/= to be offset from the rent payable to him.

Those are the orders of the court.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF APRIL, 2024.**

**HON.NDEGWA WAHOME, MBS**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**Delivered in the presence of the Landlord and in the absence of the Tenant**

