



**Wesonga v Yakub (Tribunal Case E214 of 2022)
[2024] KEBPRT 442 (KLR) (5 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 442 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E214 OF 2022
P KITUR, MEMBER
APRIL 5, 2024**

BETWEEN

ALEX MAINDI WESONGA LANDLORD

AND

SIDIQUE HARRON YAKUB TENANT

RULING

Parties and Representatives

1. The Applicant Alex Maindi Wesonga is the Landlord and has rented out a business premise to the Tenant within Mombasa County.
2. The Landlord is represented by the firm Tindika & Company Advocates.
3. Sidique Harron Yakub is the Tenant having rented the suit premises from the Landlord.
4. The firm of M/S Wangila & Wangila Advocates represents the Tenant in this matter.

The Dispute Background

5. The Landlord filed a Complaint dated 24th October 2022, seeking the following prayers;
 - a. The Tenant be compelled by the Honorable Tribunal to pay the rent arrears of Ksh 87,494/= being accrued rent arrears for the months of July, August, September and October 2022.
 - b. The Honorable do order the Tenant/Respondent to leave the premises in vacant possession having failed to file the requisite reference when he was served with a notice to terminate the tenancy on 13th July 2022
 - c. That the exercise be supervised by a third party, either by an Officer from Tribunal, Area Chief or O.C.S Central Police station for the purposes of taking inventory.



- d. Costs of this application be borne by the Respondent/Tenant.
6. The grounds in support of his Complaint, included, among others, that the Tenant had deliberately defaulted in rent payment for over four months resulting in of Kshs. 87,494/= as at the date of filing of the Complaint.
7. The Landlord further alludes to having served a Termination Notice dated 13th July 2022 which set out the grounds of termination.
8. In addition to the Complaint, the Landlord also filed an Application dated 24th October 2022 seeking the following prayers;
 - a. That this application be certified as urgent and be heard ex parte in the first instance
 - b. That pending inter partes hearing of this application, the Honourable Tribunal be pleased to direct and or order the Tenant to settle all the outstanding rent arrears amounting to Ksh 87,494 being the rent arrears accrued for the months of July, August, September and October 2022 at the rate of Ksh 23,272 per month
 - c. That the tenant be ordered to remove his tools of trade and let the subject business premises in vacant possession
 - d. That the exercise be done with supervision of either O.C.S Mombasa Central Police Station, an Officer from the Tribunal or Area Chief.
 - e. That the costs of this application be borne by the Tenant/Respondent.
9. In response, the Tenant filed a Replying Affidavit sworn on 6th November 2022 stating that the Termination Notice dated 13th July 2022 was ‘fatally defective, illegal and not tenable in law’.
10. The Tenant further alluded to having filed a Reference against the Landlord being Nairobi No. 967 of 2022 in which Orders were issued restraining the Landlord from evicting the Tenant after the Landlord failed to appear or file a response thereto as alluded to by Counsel for the Tenant.

3. List of Issues for Determination

11. The issues raised for determination are as follows;
 - a. Whether the Landlord’s Notice of termination dated 13th July 2022 is proper and lawful.
 - b. Whether the Tenant is in arrears and hence whether the Landlord is entitled to the reliefs sought.

4. Analysis and Findings

Whether the Landlord’s Notice of termination dated 13th July 2022 is proper and lawful

12. Both parties have alluded to the existence of the Notice to Terminate Tenancy dated 13th July 2022. The said notice has been produced by both parties in their pleadings.
13. In answering the question as to whether the notice is proper and lawful, we will proceed to examine the notice against the relevant provisions of Cap 301.
14. I am guided by the provisions of CAP 301 which stipulate under Section 4 that a controlled tenancy shall not terminate or be terminated and no term shall be altered otherwise than in accordance with specified provisions of the Act.



15. Section 4 of CAP 301 reads as follows:

- (1) Termination of and alteration of terms and conditions in, controlled tenancy
(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall 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 the following provisions of this Act.
- (2) 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.
- (3) A tenant who wishes to obtain a reassessment of the rent of a controlled tenancy or the alteration of any term or condition in, or of any right or service enjoyed by him under, such a tenancy, shall give notice in that behalf to the landlord in the prescribed form.
- (4) 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.
- (5) A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and requires the receiving party to notify the requesting party in writing, within one month after the date of receipt of the notice, whether or not he agrees to comply with the notice.

15. The prescribed form alluded to in this case is Form A under Cap 301. A reading of the Notice issued herein against the Form discloses the Notice issued is in the prescribed form, clearly stating the parties being the Landlord and the Tenant, stating the grounds of termination, informing the Tenant of his remedy in the event he does not agree to comply and further states the relevant provision under which it is issued.

16. The notice further complies with the provisions of Cap 301 having given a notice period of 2 months as is required. The Tenant has also acknowledged receipt of the Notice and has not in any way challenged the timelines of service.



17. In view of the foregoing, it is my considered view that the Notice of Termination of Tenancy dated 13th July 2022 as issued was proper, in the prescribed form and complies with the law.

Whether the Tenant is in arrears and hence whether the Landlord is entitled to the reliefs sought

18. The issue of the outstanding arrears was brought about by the Landlord who states that the Tenant had deliberately defaulted in rent payment for over four months resulting in of Kshs. 87,494/= as at the date of filing of the Complaint.
19. The Tenant in his Replying Affidavit did not controvert his indebtedness and only challenged the validity and legality of the Notice.
20. No evidence of payment of rent has been tendered by the Tenant.
21. Having considered the foregoing, I therefore proceed to order as follows;

Orders

22.

- a. The upshot is that the Application dated 24th October 2022 succeeds and the tenancy shall progress on the following terms:
- b. The tenant shall clear the arrears of Kshs. 87,494/= being accrued rent arrears for the months of July, August, September and October 2022 in addition to any rent and incidental costs accrued to date no later than 10th May 2024.
- c. In default, the Landlord is at liberty to proceed to levy for distress of the rent.
- d. The Tenant shall additionally hand over vacant possession of the premises to the Landlord on or before 31st May 2024 failure to which the Landlord shall be at liberty to break in and enter with the assistance of OCS Mombasa Central Police Station or any other Police station close by.
- e. This Ruling settles the Complaint dated 24th October 2022.
- f. Costs are awarded to the Landlord assessed at Kshs. 20,000/=.

HON P. KITUR - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR ON 5TH APRIL 2024 IN THE ABSENCE OF THE PARTIES.

HON P. KITUR - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

