



**Mwangi v Kariuki (Tribunal Case E1048 of 2023)
[2024] KEBPRT 440 (KLR) (9 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 440 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1048 OF 2023
P MAY, MEMBER
APRIL 9, 2024**

BETWEEN

PETER WAWERU MWANGI LANDLORD

AND

MICHAEL NJENGA KARIUKI TENANT

RULING

1. The present proceedings were commenced *vide* the reference filed by the landlord dated 24/10/2023. The landlord sought for the intervention of the Tribunal whom they accused of failing to vacate the demised premises despite the lapse of the notice period provided in a notice to terminate tenancy duly issued. The landlord also accused the tenant of having defaulted in paying rent as when it fell due.
2. The landlord also filed a notice of motion brought under certificate which sought for orders of eviction against the tenant. The application is premised on the grounds set out in the supporting affidavit sworn by the landlord. The contents of the said affidavit have been summarized herein below:
3. The landlord averred that the tenant has been a nuisance and had been summoned time without number by the local authorities including the Karai Nyumba Kumi Community. The landlord averred further that the tenant had been operating an illegal business at the premises as his license was revoked by the County Government of Kiambu.
4. The landlord stated that he issued the tenant with a notice to terminate tenancy dated 31/5/2023 which was duly served. The said notice was to take effect from August 1, 2023. The grounds relied on in the said notice are similar to those that have been adduced in the present application save to emphasize that the landlord also accused the tenant of operating a brothel in the demised premises. The clandestine business was obviously illegal as there is no known license issued for such activities in this country.



5. It was the landlord's testimony that the tenant did not file any response to the notice neither did they lodge a reference as prescribed under [cap 301](#). The notice had therefore taken effect and the tenant's continued stay amounted to trespass.
6. The application was placed before the Tribunal on October 25, 2023 whereby directions were issued to the parties. The landlord was ordered to serve the application for inter-partes hearing. On the set hearing date, the parties appeared before me but the counsel for the tenant requested the Tribunal to be granted more time to file a response in the matter as they had just received instructions. The application was allowed and the tenant was allowed 7 days to file their response. Parties were also encouraged to engage in negotiations with a view of settling the matter.
7. The parties elected to canvass the application by way of written submissions. The tenant has never filed a response to the application despite being granted leave to do so neither did they file their submissions. The landlord was instructed to serve them afresh but this did not elicit any response. It seems then they have left the Tribunal to make a determination without their input. The Tribunal will nonetheless proceed to determine the merits of the present application.
8. From the pleadings filed, it can be established that there existed a controlled tenancy between the landlord and the tenant. Termination of the said tenancy requires issuance of a termination notice in prescribed form. It is incumbent upon this tribunal to assess that the notice issued to the tenant by the landlord is properly as prescribed in law by Cap 301.

Section 4 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) states:

Section 4: Termination of, and alteration of terms and conditions in, controlled tenancy(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.

(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.

9. The above position of the law on the issue of a termination notice is now settled. The court in [Manaver N Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited](#), Civil Appeal No 203 of 1994, stated that:

-“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 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.”



10. It is evident that the notice of termination of the tenancy herein was in Form A as prescribed by the Act. Further, the notice of termination of the tenancy was to take effect on August 1, 2023, being a period exceeding two months as required by the Act.
11. Section 7(1) (b) of the said Act provides one of the grounds for seeking to terminate tenancy by a landlord to be a tenant's default 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. This is one of the grounds cited by the landlord.
12. The tenant having been served with a notice of termination of notice, the law prescribes the manner in which they should have objected to the same. The tenant having failed to object to the said notice, the same took effect upon the lapse of the notice period as at 1st August, 2023.
13. In the end the application dated 24/10/2023 is allowed in terms of prayers 2 and 3 with costs awarded to the landlord assessed at Kshs. 50,000/-. This ruling settles the reference dated 24/10/2023.

Ruling dated, signed and delivered virtually this 9th day of April, 2024.

HON. PATRICIA MAY

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the absence of the parties

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