



**Khamisi & 3 others v Aziz & 3 others (Tribunal Case E050 & E053 of 2023
(Consolidated)) [2023] KEBPRT 1205 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1205 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E050 & E053 OF 2023 (CONSOLIDATED)
M MAKORI, MEMBER
DECEMBER 14, 2023**

BETWEEN

KHADIJE SALIM KHAMISI 1ST APPLICANT

SWALHE KHAMISI 2ND APPLICANT

AND

ABDI AZIZ 1ST RESPONDENT

ABDI NOOR 2ND RESPONDENT

**AS CONSOLIDATED WITH
TRIBUNAL CASE E053 OF 2023**

BETWEEN

ABDI AZIZ 1ST APPLICANT

ABDI NOOR 2ND APPLICANT

AND

KHADIJE SALIM KHAMISI 1ST RESPONDENT

SWALHE KHAMISI 2ND RESPONDENT

RULING

1. The present claim was filed vide a reference dated 1st September 2023 and an application of even date supported by the supporting affidavit of Swalhe Khamisi seeking among other orders an eviction order against the tenants from the business premise on Suna/East 1/7619.



2. The tenants filed a reference dated 4th October 2023 and an application dated 3rd October 2023 seeking among other orders a restrain order be issued against the landlady's from interfering with the tenancy of the applicants on the business premise on Suna/East 1/7619.
3. From the totality of the pleadings filed by parties and submissions made, two issue pose themselves for determination:
 - i. Whether the Landlord is entitled to the orders sought in the application dated 1st September 2023
 - ii. Whether the Tenant is entitled to the reliefs sought in the application dated 4th October 2023
 - i. Whether the Landlord is entitled to the orders sought in the application dated 1st September 2023 and Whether the Tenant is entitled to the reliefs sought in the application dated 4th October 2023.
4. To address this issue it is important to focus on the provisions of Shops, Hotels and Catering Establishments) Act on termination of a tenancy.
5. The tribunal is bound by Section 7 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* establishes the grounds upon which a landlord can terminate a tenancy as follows;
 1. Where under section 4 of this Act served a notice of termination of a controlled tenancy on the tenant, the grounds on which the landlord seeks to terminate such tenancy may be such of the following grounds as are stated in the aforesaid notice—
 - a. where, under the tenancy under which the tenant holds for the time being, the tenant has any obligations in respect of the repair and maintenance of the premises comprised in such tenancy, that the tenancy ought to be terminated in view of the state of repair of the premises, being a state resulting from the tenant's failure to comply with the said obligations;
 - b. 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;
 - c. that the tenant has committed other substantial breaches of his obligations under the tenancy, or for any other reason connected with the tenant's use or management of the premises comprised in the tenancy;
 - d. that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his retail trade or business or enterprise and to the situation and extent of, and facilities afforded by, the premises comprised in the tenancy;
 - e. that the tenancy was created by the subletting of part only of the premises comprised in a superior tenancy of which the landlord is the owner of interest in reversion expectant on the termination of that superior tenancy, and that the aggregate of the rents reasonably obtainable on separate lettings of such premises in parts would be



substantially less than the rent reasonably obtainable on a letting of such premises as a whole, and that on the termination of the tenancy the landlord requires possession of such premises as a whole for the purpose of letting or otherwise disposing of the same as a whole;

- f. that on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises;
- g. Subject as hereinafter provided, that on the termination of the tenancy the landlord himself intends to occupy for a period of not less than one year the premises comprised in the tenancy for the purposes, or partly for the purposes, of a business to be carried on by him therein, or at his residence.

6. In *Oscar Luvaha (Explore Auto Valuers and Assessories Limited) v Babi Investments & another* [2021] eKLR where the court in citing the Court of Appeal decision noted that;

“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.”

- 7. The Applicant /landlady’s aver that they issued a landlords notice to terminate or alter the terms of the tenancy. The same is attached as annexure SK 2
- 8. The prima facie view of the form confirms that it is indeed the contemplated form under the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*.
- 9. Further the said notice is dated 6th of March 2023 and the contents therein allude to the fact that the respondent/tenants ought to vacate the premises on or before the 1st of June 2023. The respondent/tenant have shied away from denying or confirming the issuance of such a notice, its validity and whether or not the same was served upon them.



10. The Act also directs that the notice must indicate the reasons for the proposed termination of tenancy and must give a period of one month within which the tenant may voice his objection (if any) to the proposed termination. This requirement is hemmed in in Section 4(5) which provides inter alia:-
- “ 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.”
11. The aforementioned notice indicates that the Landlady’ seek orders for the tenants to vacate the premises and the claimed notice highlighting that she indeed intends to use the premise for personal use.
12. From above cited provision of the law and authority, it is without doubt that the notice to terminate issued on the 6th of March 2023 is contemplated and therefore a valid and legal notice. The respondents have not exercised the right under section 4(5) and therefore no protection under the act can be granted to them.
13. Having established that the landlady’s notice is valid, I find that the landlady’s are entitled to the reliefs sought however a contentious issue on rent arrears arises.
14. As per the Notice of termination of tenancy issued on the 6th of March 2023 the landlady’s indicates that there exists a rent arrears of twelve(12) months amounting to Kenya shillings two hundred and forty thousand (240,000/=).The Landlady has sought to prove her averments by attaching copies of cheque payments purporting to be the only valid payments received.
15. On the contrary, their replying affidavit and in opposing the tenants application dated 3rd October 2023 the landlady’s make claim to amount of Kenya shillings Four hundred and twenty thousand (Ksh 420,000) being rent arrears since February 2022.
16. The tenants in their application have denied the existence of any debt and make claim of them being compliant tenants however no payment details of rent arrears have been attached.
17. Based on the assessment above I find that the tenant has an accrued rent of 240,000 being aren’t arrears accrued on or before the month of March and an accrual of rent arrears being 180,000 from the month of March to November.
18. Based on the foregoing, the Tribunal makes the following orders.
- The Applicant/Landlords reference and application dated 1st September 2023 is merited as filed. As such, the same is allowed as prayed.
 - The tenants’ reference and application dated 4th of October 2023 is dismissed.
 - The tenants shall pay an accrued rental arrears of Kenya shillings Four hundred and twenty thousand (Ksh 420,000) being accrued rental arrears up to the month of November.
 - The OCS Migori Police Station to enforce compliance with this order
 - Costs of the applications shall be met by the tenant.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DECEMBER 2023

HON. MAKORI MIKE (MR.)



MEMBER

BUSINESS PREMISES RENT TRIBUNAL

