



**Janpath Holdings Limited v Ahmed (Tribunal Case E034 of 2024)
[2024] KEBPRT 661 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 661 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E034 OF 2024
A MUMA, MEMBER
MAY 17, 2024**

BETWEEN

JANPATH HOLDINGS LIMITED LANDLORD

AND

ABDI IBRAHIM AHMED TENANT

RULING

A. Parties And Their Representatives

1. The Applicant, Janpath Holdings Limited is the owner of the suit premises known as Mombasa/Block 1/180 and hence the Landlord of the suit premises (hereinafter referred to as the “Landlord”)
2. The firm of Swaka Advocates represents the Landlord in this matter.
3. The Respondent, Abdi Ibrahim Ahmed, is a tenant in the suit premises (hereinafter referred to as the “Tenant”).
4. The firm of Khalid Salim & Company Advocates represents the Tenant in this matter.

B. Background Of The Dispute

5. Through a Reference and an Application evenly dated 19th January 2024, the Landlord moved this Honourable Tribunal seeking among other orders that; the matter be certified as urgent and service thereof be dispensed with, that the Tenant be ordered to vacate the business premises for the reason that it intends to sell the suit premises.
6. The Tribunal upon perusal of the Application issued an order dated 30th January 2024 directing the Application to be served for inter-parties hearing on 4th March 2023.



7. In response to the Landlord's Application, the Tenant filed a Notice of Preliminary Objection dated 20th February 2024.
8. It is the Landlord's Application dated 19th January 2024 which is subject of this ruling.

C. Landlord's Case

9. The Landlord's case is based on the grounds contained in the Supporting Affidavit of Kazim Mohammed, a representative of the Landlord through a Power of Attorney annexed thereto and dated 9th October 2019.
10. In its Submissions dated 18th March 2024, the Landlord submits that he entered into an oral tenancy agreement with the Tenant. However, it intends to sell the suit premises and has entered into an agreement for sale where one of the terms therein was to grant vacant possession to the Purchaser.
11. It further submits that it issued the Tenant with a notice to terminate the tenancy dated 7th August 2023 with an effective date of 30th September 2023. On 28th November 2023, the Landlord issued a further notice directing the Tenant to vacate as the notice period had lapsed and to allow it to renovate the suit premises and hand it in to the new owner.

D. Tenant's Case

12. The Tenant submits the notices of termination dated 7th August and 28th November 2023 are fatally defective as they are not in line with Section 4(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 Laws of Kenya which provides for termination of a controlled tenancy.
13. Further, the Tenant claims that the Landlord has no genuine reason to terminate the tenancy

E. List Of Issues For Determination

14. Having given full consideration to the documents filed before this Court, it is my considered view that the sole issue that falls for determination is:
 - i. Whether the Landlord's Notices of termination are valid?
 - ii. Whether failure by Tenant to oppose Landlords Notices is fatal?

F. Analysis And Dertemination

15. Section 4(4) of [Cap 301](#) provides for termination of a controlled tenancy. It 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, 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.

16. Section 4 (5) of [Cap 301](#) provides further requirements for a notice of termination to be valid and effective. It provides: -

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

17. In light of the aforementioned provisions of [Cap 301](#), a notice set to terminate a controlled tenancy should be in the prescribed form, provide a notice period of not less than two months, indicate the grounds upon which the tenancy is being terminated and require the receiving party to indicate whether or not they wish to comply with the notice.
18. This Tribunal notes that the tenancy agreement between the Landlord and the Tenant herein is an oral agreement and hence a controlled tenancy which ought to be terminated as per Section 4 of [Cap 301](#).
19. I have carefully perused both notices issued by the Landlord. Firstly, I note that both notices are not in the prescribed form. Secondly, the notice of termination dated 7th August 2023 has a notice period of less than two months, with the effective date being 30th September 2023. Similarly, the notice dated 28th November 2023 requires the Tenant to vacate within 21 days. This notice period in both notices fall short of the two months notice period required under Section 4 of [Cap 301](#).
20. Thirdly, both notices indicate the reason for termination as being their intention to conduct renovations after which they shall hand over the suit premises to the Purchaser, in performance of the Agreement for Sale in respect of the suit premises. The Landlord has attached an Agreement for Sale dated 22nd November 2023 in respect of the Property where under Clause 7, the Landlord is obligated to grant vacant possession to the new owner.
21. While this Tribunal notes that the notices of termination lack form and substance, it is reminded of Section 6 of [Cap 301](#) which provides that: -

A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal:

Provided that a Tribunal may, for sufficient reason and on such conditions as it may think fit, permit such a reference notwithstanding that the receiving party has not complied with any of the requirements of this section.

22. The Tenant herein failed to challenge the notices by filing a reference before this Tribunal and only raised the issue of validity in response to the Landlord's Reference and Application. In fact, upon receipt of the notice dated 7th August 2023, the Tenant indicated in writing that he is agreeable to vacate after 6 months from September 2023 but has remained in occupation of the premises to date.
23. In the circumstances, the Tenant slept on his right to challenge the notice of termination before this Tribunal in the first instance by filing a reference and hopes to have a second bite at the cherry. This Tribunal is well guided by the maxims of Equity which dictate that Equity does not help the indolent.



24. It would therefore be unfair to the Landlord for this tribunal to invalidate the notices of termination on grounds of form when the same were not opposed and no reference filed by the Tenant at the appropriate time in fact as we speak the Tenant is a trespasser as the notices had taken effect and the proceedings herein are just but procedural to enable the landlord to get eviction orders.

G. Determination

25. The upshot is that the Landlord's Reference and Application dated January 19, 2024 are hereby upheld in the following terms:
- a. The Tenant's Notice of Preliminary Objection dated February 20, 2024 is hereby dismissed;
 - b. The Landlord's reference is allowed in terms of prayers 2, 3 and 4 of the Landlord's application dated January 19, 2024.
 - c. Each party to bear their own costs.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, delivered and signed at Nairobi on this 17th day of May 2024 in the presence of Amina for the Tenant and Swaka for Landlord.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

