



**Kibicho t/a Chania Café v Mukuhi & another (Tribunal Case
E012 of 2023) [2024] KEBPRT 800 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 800 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E012 OF 2023
CN MUGAMBI, CHAIR
JUNE 6, 2024**

BETWEEN

JAMES NDARUGA KIBICHO T/A CHANIA CAFÉ TENANT

AND

FLOMENA MUKUHI 1ST RESPONDENT

ESTHER KAMAU 2ND RESPONDENT

RULING

1. The Landlord's notice to terminate tenancy dated 11.10.2022 is brought on the grounds that the Tenant does not pay rent in time and has therefore accumulated arrears and on the further ground that the Landlady is intending to use the house for her own family.
2. The Tenant was on 8.9.2023 allowed to file his Reference to the notice out of time and further ordered to clear all and any outstanding rent arrears.
3. It is therefore not true as suggested by the Landlord that the Tenant has not filed a Reference in these proceedings, as indeed there is a Reference dated 13.9.2023 filed within the timelines granted by the Tribunal in its ruling of 8.9.2023.
4. When this matter came up for hearing on 12.4.2024, only the Tenant and Counsel attended. The Landord and Counsel did not attend. During the hearing, the Tenant adopted his statement is his evidence.
5. The landlord in this case had the duty to prove the grounds set forth in her notice to terminate tenancy. In the absence of any evidence from the Landlord and there being no challenge to the evidence of the Tenant by way of his statement adopted as evidence in these proceedings, I do not find any of the grounds set forth in the notice to terminate tenancy as proven.



6. It is the law that where the plaintiff gives evidence in support of her case but the defendant fails to call any witness in support of its allegations then the plaintiff's evidence is uncontroverted and the statement of defence therein mere allegations. (see the case of *Janet Kaphiphe Ouma & Another vs Marie Stopes International* (Kisumu HCCC No. 68 of 2007).
7. Consequently, I find that the grounds set forth in the notice to terminate tenancy remain mere allegations and therefore not proven. Under the provisions of Section 9(1)(b) of [Cap 301](#), I order that the tenancy notice dated 11.10.2022 shall be of no effect.
8. The upshot of this is that the Reference by the Tenant dated 13.9.2023 is allowed with costs to the Tenant.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF JUNE, 2024

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the absence of the parties.

