



**Juma t/a Ady Laundry v Marambo & another (Tribunal Case E041 of 2024)  
[2024] KEBPRT 1640 (KLR) (Commercial and Tax) (26 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1640 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
COMMERCIAL AND TAX  
TRIBUNAL CASE E041 OF 2024  
A MUMA, MEMBER  
NOVEMBER 26, 2024**

**BETWEEN**

**CALVINCE JUMA T/A ADY LAUNDRY ..... APPLICANT**

**AND**

**ELIJAH OTIENDE MARAMBO ..... 1<sup>ST</sup> RESPONDENT**

**LINUS OKATCH ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A. Parties And Representatives**

1. The Applicant, Calvince Juma, trading as Ady Laundry, is the tenant and had rented space for business in the suit property situated within Oyugis Town along Oyugis-Kisii Road (hereinafter the “Tenant”).
2. The Tenant represents himself in this matter.
3. The 1<sup>st</sup> Respondent, Elijah Otiende, is the owner of the suit premises and had rented out the aforementioned space to the tenant (hereinafter the “Landlord”).
4. The 2<sup>nd</sup> Respondent is the 1<sup>st</sup> Respondent’s property manager (hereinafter the “Agent”).
5. The firm of K & K Advocates LLP represents the Respondents in this matter.

**B. Background Of The Dispute**

6. The Tenant moved this Tribunal vide a Reference and a Notice of Motion Application filed under a Certificate of Urgency both dated 10<sup>th</sup> September, 2024 on a complaint that the Landlord had commenced execution of an irregular notice of termination.



7. On 11<sup>th</sup> September, 2024, this Honourable Tribunal issued orders inter alia; that the Respondents be and are hereby prohibited and restrained from terminating the tenancy and/or evicting the Tenant from the suit premises pending inter-partes hearing.
8. The Tribunal on 23<sup>rd</sup> September 2024, further issued orders inter alia; that an Inspection be done on 25<sup>th</sup> September 2024 and a report detailing the status of electricity and water be filed. An Inspection Report dated 7<sup>th</sup> October 2024 was filed pursuant to the aforesaid order.

### **C. The Tenant's Claim**

9. The Tenant avers that the initial monthly rent payable was Kshs. 7,000.00 which was later increased to Kshs. 10,000.00 without notice but on the Landlord's undertaking that the extra costs would cater for water, electricity bills, supply of a standby backup generator and sewer/sanitary amenities.
10. The Tenant further avers that the Landlord issued him a Tenancy Notice on 9<sup>th</sup> September 2024 that was meant to take effect on 1<sup>st</sup> December 2024.
11. However, the Tenant states that the Landlord commenced execution of the Notice before it lapsed and that the Landlord issued the Tenant with an oral notice to vacate the premises failure to which, the Tenant would be forcefully evicted from the suit premises.
12. In addition to the above, the Landlord disconnected water and electricity supply to the suit premises and withdrew the standby backup generator services whilst also denying the Tenant access to sewer and sanitary amenities by locking the toilet as a means of coercing and harassing the Tenant to give in to vacate the premises.
13. Furthermore, it is the Tenant's averment that he runs a laundry business and uses washing machines which are entirely dependent on water and electricity to run thus disconnection of the electricity and water supply led to a stalling of the business.
14. The Tenant also avers that the disconnection of water and electricity has caused the Tenant to default in washing and cleaning contracts that he had with clients causing some clients to threaten to take legal action for breach of contract, with some of the clients already terminating their contracts.
15. Furthermore, it is the Tenant's averment that the equipment used in conducting his business is of a voltage of 650W which is relatively low voltage and that the electrician commissioned by the Landlord has not demonstrated what manner of high voltage machines the Tenant is using, showing its power consumption levels.
16. Additionally, he avers that he paid landlords agents rent of Kshs. 4,000.00 in cash and Kshs. 6,000.00 via MPESA for the month of June and Kshs. 10,000.00 in cash for the month of July.
17. The Tenant further averred that the Landlord refused to receive rent for the month of September from the Tenant on the pretext that the tenancy was already terminated.

### **D. The Landlord's Claim**

18. The Landlord avers he purchased the suit premises sometime in June, 2023 through Global Pathways Management Limited (hereinafter "the Landlord's Company") and that at the time of acquisition, the Applicant herein was already a tenant whom the Landlord happily inherited on a temporary basis pending planned renovations.
19. The Landlord further denies the allegations by the Tenant of the initial monthly rent being Kshs. 7,000.00 and avers that the Tenant has always paid a monthly rent of Kshs. 10,000.00.



20. Additionally, it is the Landlord's averment that he had a discussion with the Tenant upon assumption of possession of the property and informed the Tenant of his intentions to renovate which would thereafter entail in an increase of the monthly rent payable, which has not yet been done.
21. The Landlord also avers that the Tenant is a problematic, quarrelsome and socially awkward individual having squabbles with different individuals from time to time leading to loss of business as some tenants vacated the remises to avoid interaction with the Tenant herein.
22. The Landlord also states that he had previously issued the Tenant with a one month notice to vacate dated 8<sup>th</sup> October 2023 meant to take effect on 1<sup>st</sup> December 2023. After receipt of this Notice, the Tenant requested for more time and the Landlord extended the time to April 2024.
23. Thereafter, on 30<sup>th</sup> April 2024, the Tenant sought for a final extension till September 2024 on the basis that he needed to finalize fit out of his newly found premises opposite Postbank, Oyugis.
24. Following this, the Landlord communicated to the Tenant not to pay rent for September 2024 via an SMS sent on 2<sup>nd</sup> September 2024.
25. Despite the above communication, the Tenant paid the rent for that month on the same day thus prompting the Landlord to request the 2<sup>nd</sup> Respondent to refund the amount paid back to the Tenant.
26. The Landlord avers that he then requested to have a tribunal-sanctioned notice of termination issued to the Tenant from the Business Premises Rent Tribunal sitting in Kisumu which was then served to the Tenant on 9<sup>th</sup> September 2024.
27. The Landlord also avers that he did not disconnect the water and electricity supply, neither did the Landlord deny the Tenant access to the sewer and sanitary facilities.
28. Moreover, the Landlord avers that the Tenant was in rent arrears for the months of June and July, despite which the Tenant continued to enjoy water, electricity and security services which were all paid by the Landlord on a monthly basis.
29. The property where the suit premises is located contains a petrol station run under the Rubis Franchise. The Rubis Franchise and the Landlord's Company have an agreement that allows Rubis to set up some infrastructure to support its operations such as washrooms which are utilized by tenants and members of the public thus impossible for the Landlord to deny the Tenant the use of these facilities.
30. Amongst the aforementioned infrastructure set up by Rubis, is a standby generator which only supports petrol station pumps, the canopy and a few offices that are vital to the station's operations. The Landlord, therefore, avers that he does not own the generator nor have control of which premises it supplies power to hence making it impossible for the Landlord to disconnect the Tenant from the same.
31. The Landlord also avers that sometime in November, 2023 he commissioned an electrician to look into the cause of the frequent blackouts that affected the entire station. The electrician established that the black outs were a result of the high voltage laundry equipment used by the Tenant.
32. As a mitigation measure, the electrician advised the Landlord to separate the power lines and assign the Tenant an independent power line which was done soon thereafter and the frequency of the blackouts resultingly decreased.
33. The Landlord avers that sometime in August 2024, there was a return of the frequent blackouts which prompted the Landlord to enlist an electrician to determine the cause thereof and a permanent solution to the same.



34. The electrician discovered that the Tenant had “tapped” power from a neighboring shop and the standby generator which was the cause of the blackouts.
35. Accordingly, the Landlord directed the electrician to disconnect the cable used to “tap” the power and document the incident for purposes of the Landlord’s records.
36. Ultimately, the Landlord believes that the relationship between the Tenant and himself has irretrievably broken down in addition to his intention to utilize the suit premises for a family business after renovation.

#### **E. The Agent’s Claim**

37. The Agent avers that the Tenant has misled this Honourable Tribunal by erroneously referring to him as the Landlord whilst he is an employee of the Landlord’s company, working as the property manager.
38. He further avers that his role as the property manager is to ensure the safety, security and comfort of tenants and customers; ensuring tenants pay rent on time, timely communicating necessary information to both customers and tenants, maintaining the building, and ensuring that relevant services such as water availability, cleanliness of the compound and waste collection are done promptly and diligently.
39. The Agent also avers that he was employed by Global Management Pathways Limited on 18<sup>th</sup> September 2023, and as the time of his employment, the Tenant was already in occupation of the suit premises and that there was no tenancy agreement between the Landlord and the Tenant.
40. It is the Agent’s further averment that the reason for lack of a tenancy agreement was due to the Landlord’s intention to renovate the first floor where the suit premises is located, which renovation has been delayed from January 2024 till date.
41. He also avers that on 8<sup>th</sup> October 2023, he was directed to serve a three month notice to vacate to the Tenant meant to take effect in December 2023 in anticipation of the planned renovations in January 2024. The Tenant requested for a further extension to April 2024 and later on till September 2024, being the final extension.
42. On 2<sup>nd</sup> September 2024, the Agent was informed that the Tenant had remitted rent for that month which he refunded.
43. It’s the Agent’s further averment that he has dealt with various peace-disrupting issues involving the Tenant and being reported to him by other employees on diverse dates while executing his duties as the property manager.

#### **E. List Of Issues For Determination**

44. Having given full consideration to the submissions filed by Counsels, the issues for determination are;
  - a. Whether the Tenant is in rent arrears?
  - b. Whether the Notice to Terminate dated 9<sup>th</sup> September 2024 is valid and as such, whether the Tenant should hand over vacant possession to the Landlord?

#### **E. Analysis & Determination**

45. The Submissions filed by the parties raise fundamental issues discussed herein below:
  - a. Whether the Tenant is in rent arrears?



46. With regard to the issue of rent, the Landlord claims that Tenant has defaulted paying rent for the premises for the months of June and July 2024 in the sum of Kshs. 20,000.00.
47. Contesting this, the Tenant adduced M-Pesa messages supporting his claim that he paid Kshs. 4,000.00 via MPESA and the balance of Kshs. 6,000.00 in cash to the Landlord's Agent, Winnie Anyango, for the month of June. He also averred that he paid the rent for July in the sum of Kshs. 10,000.00 in cash to the Landlord's Agent, George Ochieng.
48. The Landlord has denied the same, stating that the agreed-upon mode of rent payment was MPESA. However, the Tenant alleges that he has previously and severally paid rent in cash and the Landlord failed to produce evidence to demonstrate that all previous payments by the Tenant were done via MPESA.
49. As a result of the failure of the Landlord to produce a rent book showing the rent arrears accrued by the Tenant as required of him by the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), this Tribunal is of the view that the Tenant is not in arrears as claimed by the Landlord. This issue is thus well before this Court.

**Whether the Notice to Terminate dated 9<sup>th</sup> September 2024 is valid and as such, whether the Tenant should hand over vacant possession to the Landlord?**

50. The [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Chapter 301 Laws of Kenya Act at section 4(2) provides that:

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.

51. Section 4(4) further 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.

52. In the case of *Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited*, Civil Appeal No. 203 of 1994 it was 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 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.”

53. Section 4(5) of the Act states:

“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.”

54. In this case the Landlord issued the Tenant with the Notice on 9<sup>th</sup> September 2024 which was to take effect from 1<sup>st</sup> December 2024. Based on the above provision, the said notice was to take effect after more than two months which is as per the Provisions of CAP 301.
55. Moreover, the Notice provided for the recipient to communicate whether or not they intend to comply with the Notice within one month after receipt thereof. This is in line with the provision encompassed in Section 4(5) of the Act which establishes the contents of an effective termination notice.
56. The main question for determination that remains before this Tribunal is with regards to the substance of the said Notice.
57. Section 7 of the Act provides for the grounds within which Landlord is allowed to issue a termination notice and at subsection (g) it provides as follows;
- “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—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.”
58. In addition, section 12(4) of Cap. 301, Laws of Kenya gives this Tribunal the following powers: -
- “In addition to any other powers specifically conferred on it by or under the Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant and may make such order thereon as it deems fit”.
59. The Landlord in his Notice gave reasons for termination being accrued rent arrears by the Tenant and an intention to renovate the suit premises. This Tribunal has determined the issue of arrears hereinabove and shall proceed to address the issue of the intended renovations by the Landlord.
60. It is trite law that the Landlord is required to produce evidence of intended renovations where such renovations are the reason for termination of a controlled tenancy.
61. In this instant case, the Landlord has not adduced any evidence to show that he intends to renovate the suit premises. However, this Tribunal has taken note of the fact that the Landlord previously and severally communicated his intentions to renovate the suit premises, which allegation has not been disputed by the Tenant.
62. Therefore, this Tribunal is of the view that the Tenant was aware of the Landlord’s intention to renovate after purchase and given the previous notice(s), the Tenant was well aware of the Landlord’s intention to terminate the tenancy.
63. Furthermore, the Inspection Report dated 7<sup>th</sup> October 2024 has established that the lack of electricity supply at the suit premises was a result of the blown miniature circuit breaker owing to an overload due to high voltage from the Tenant’s power line. This rules out the allegation of irregular execution of the Termination Notice by the Landlord. Additionally, the allegations of the Landlord threatening the Tenant that he would execute the Termination Notice by force have not been substantiated by the Tenant.



64. For those reasons and after careful consideration of the facts and pleadings presented to this Tribunal, I find that the Tenant's Application and Reference dated 10<sup>th</sup> September, 2024 lacks merit.

#### **E. Orders**

65. In the upshot the following orders shall abide;
- a. The Tenant's Reference and Application dated 10<sup>th</sup> September, 2024 are hereby dismissed;
  - b. The Tenant is hereby ordered to vacate the premises by 30<sup>th</sup> December 2024,
  - c. Each party to bear their own costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 26<sup>TH</sup> DAY OF NOVEMBER 2024 IN THE PRESENCE OF CALVINCE, THE TENANT IN PERSON AND KIPROTICH FOR THE LANDLORD.**

**HON A. MUMA - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

