



**Torono v Kirgotty & another (Tribunal Case E152 of 2023)  
[2023] KEBPRT 1147 (KLR) (Civ) (15 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1147 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E152 OF 2023  
M MAKORI, MEMBER  
DECEMBER 15, 2023**

**BETWEEN**

**NAOMI TORONO ..... APPLICANT**

**AND**

**SIMEON OLE KIRGOTTY ..... 1<sup>ST</sup> RESPONDENT**

**PROPERTY MANAGER SKY VIEW BUSINESS CENTRE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant/Tenant filed application dated 18/8/2023 seeking orders against the Respondents challenging a notice dated 1/6/2023. The Respondents in retaliation filed a Replying Affidavit dated 5/9/2023 and a statement of defence and counterclaim dated 5/9/2023.
2. The Respondents at paragraph 5 and 6 of their Replying affidavit dated 5/9/2023 alludes to a Tenant-Landlord relationship that was formalized through a lease agreement dated 11/3/2022.
3. From the foregoing and the pleadings filed by parties, the single most issue for determination is whether the Demand Notice dated 1/6/2023 in legal valid and enforceable and what are the appropriate orders in the circumstances.
4. In addressing this issue, I shall consider two aspects: the formal requirements of a notice for termination of a tenancy agreement and the Landlord's grounds for termination of the tenancy.



5. For formal requirements of notice of termination of a tenancy I am guided by section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 Laws of Kenya (hereinafter referred to as the “Act”) 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.”

6. Additionally, Section 4(4) 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, unless the terms and conditions of the tenancy provide for a period exceeding two months or the parties to the tenancy agree in writing to a lesser period of notice.
7. 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.”

8. Additionally, according to Section 4(2) mentioned above, the Notice of Termination of tenancy should be the prescribed form, specifically Form A, as provided for in the *Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966*.
9. The Landlord’s notice of termination of the tenancy was not in Form A prescribed by the Act but rather in form of a letter. The notice of termination of the tenancy herein therefore does not meet the requirements of the Act with regard to being in a prescribed form.
10. According to Form A as provided in the Regulations above mentioned, the Landlord’s notice to terminate the terms of the Tenancy herein should have specified;
- The Landlord’s premises occupied by the Tenant;
  - The duration of the notice of terminating the tenancy and the date when the notice is to take effect;
  - The grounds for termination of the tenancy;
  - The requirement that the Tenant should within one month notify the Landlord in writing whether or not the Tenant agrees to comply with the notice as from the date of receipt of the notice.



11. For Grounds for termination of the tenancy by the Landlord I am guided by the provision of section 4(1) of the Act provides that no tenancy shall be terminated, or no term or condition, or right or service enjoyed by the tenant shall be altered otherwise than in accordance with the provisions of the Act.
12. The Act further provides for the grounds on which the Landlord may seek to terminate the tenancy in Section 7 *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 Laws of Kenya the grounds stated under this provision and which are applicable herein include;
  - i. 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;
  - ii. 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; and
  - iii. 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;
13. In the upshot and based on the foregoing the Tribunal find that the reference by the Tenant is merited and makes the following orders; -
  - a. The Demand Notice Dated 1/6/2023 is null and void pursuant to Section 4 of *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 Laws of Kenya.
  - b. The Respondent, his servants, agents or any other persons acting on his behalf are hereby restrained from evicting, closing or interfering with Applicant's quiet enjoyment of the subject property subject to the payment of agreed rent.
  - c. The Applicant/Tenant to clear all the outstanding rent arrears within 60 days failure to which the Respondents shall be at liberty to distress for rent.
  - d. The Respondent to provide for the costs of the application.

**RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 15<sup>TH</sup> DECEMBER, 2023**

**HON. MIKE MAKORI (MR.)**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Martin Kirgoty

