



**Salama t/a Central Exhibitions v Molo Group & 6 others (Tribunal Case E1004 of 2023) [2024] KEBPRT 636 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 636 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E1004 OF 2023  
A MUMA, MEMBER  
APRIL 25, 2024**

**BETWEEN**

**SHAIDI SALAMA T/A CENTRAL EXHIBITIONS ..... LANDLORD**

**AND**

**MOLO GROUP ..... 1<sup>ST</sup> RESPONDENT  
DEEMELECTRONICS ..... 2<sup>ND</sup> RESPONDENT  
JAMES KIMANI ..... 3<sup>RD</sup> RESPONDENT  
GATACH ENTERPRISES ..... 4<sup>TH</sup> RESPONDENT  
LEAH MUKAMI ..... 5<sup>TH</sup> RESPONDENT  
SAMUEL THANU ..... 6<sup>TH</sup> RESPONDENT  
KENNEDY NDUNGU ..... 7<sup>TH</sup> RESPONDENT**

**RULING**

**A. Parties and Representatives**

1. The Applicant, Shaidi Salaam T/A Central Exhibitions is the owner of the suit property located at Central Exhibition House located at River Road within Nairobi County (hence the Landlord).
2. The firm of Yator & Associates Advocates represents the Applicant in this matter.
3. The 1<sup>st</sup> Respondent, Molo Group is an occupant in the suit property (hence the tenant).
4. The firm of Murimi Murango Associates represents the 1<sup>st</sup> Respondent in the matter.



## **B. Background of the Dispute**

5. The Landlord moved this tribunal vide a Notice of Motion Application and Notice to terminate dated 5<sup>th</sup> October 2022 seeking for; the tenants to be ordered to vacate the suit premises, the officer commanding station Kamukunji Police Station do oversee compliance of the first prayer, the tenants to meet the costs of the application and any other remedy the court may deem fit.
6. The Tribunal issued orders dated 5<sup>th</sup> October 2023 that the Application be served for hearing inter-partes on 31<sup>st</sup> October 2023.
7. In response, the Tenant filed two Notice of Motion Applications both dated 26<sup>th</sup> October 2023; one seeking for the orders that; the Application and Notice to terminate filed by the Landlord be struck out and for restraining orders against Nyakundi Robert Mongare do issue barring him from participating in the proceedings and costs.
8. The second Application sought for orders that the Notice of Motion Application dated 26<sup>th</sup> October 2023 be heard ex-parte in the first instance and service be dispensed with, the tribunal to enlarge time for the 1<sup>st</sup> Tenant to file the Reference to the Notice to Terminate/alter terms of the tenancy dated 27<sup>th</sup> April 2023, the annexed reference be deemed as properly filed and the Landlord be restrained from evicting, harassing or in any way interfering with the 1<sup>st</sup> Respondent's business located on the suit property.
9. The Tribunal gave orders dated 31<sup>st</sup> October 2023 allowing the Tenant to file a Reference to the Notice to terminate/alter Tenancy terms dated 27<sup>th</sup> April 2023, the annexed reference be deemed as properly filed, the Landlord be restricted from interfering with the Tenant's business premises until the hearing and determination of the suit and Mr. Nyakundi was ordered to file necessary papers and appear before the tribunal on 3<sup>rd</sup> November 2023 to explain his status as an advocate.
10. Through a Notice of Withdrawal dated 2<sup>nd</sup> November 2023, the 1<sup>st</sup> Tenant sought to withdraw the Notice of Motion claim against the Landlord's Advocate Nyakundi Robert Mongare. The same was withdrawn and the matter rested new counsel was appointed.

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

11. The tenant claims that the Landlord issued the Tenant with a notice to vacate dated 27<sup>th</sup> April 2023 and the Tenant following a Notice to Terminate/alter terms of the tenancy dated 27<sup>th</sup> April 2023 that the tenant was not served with.
12. It is therefore the Tenant's case that the Landlord's Notice Terminate dated 27<sup>th</sup> April 2023 is invalid and the same should be disallowed by the tribunal.

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

13. It is the Landlord's case that the parking space was not factored in the Lease Agreement
14. The Landlord further claims that it has other tenants and none is provided with any parking space and anybody who arrives first gets to park his or her car.

## **E. List of Issues for Determination**

15. I have carefully perused the material placed before this court by the parties and it is my considered opinion that the following issues fall for determination:



- a. Whether the Notice issued by the Landlord is valid and whether the lease provides for a parking space?

## H. Analysis & Determination

### a. Whether Notice issued by the Landlord is valid

16. 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.

17. 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

18. 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.”

19. In this case the Landlord issued the tenant with a Notice to terminate tenancy on 27<sup>th</sup> April 2023 which was to take effect from 1<sup>st</sup> July 2023. 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. As such the said notice can be deemed to be valid.
20. Having established that the Notice issued by the Landlord to the tenant was valid, the main question for determination before this Tribunal is with regards to the substance of the said Notice.
21. The Landlord in his Notice stated that the reason for termination is to enable him carry out some renovations and repair to the premise. In the Replying Affidavit sworn on 4<sup>th</sup> March 2024 by Shaidi Salaam, the Landlord attached a letter dated 14<sup>th</sup> December 2023, from the Nairobi City County requiring him to produce approved building plans for all alterations within the premises for verification as evidence of the intended renovation.
22. Section 7 of the Act provides for the grounds within which Landlord is allowed to issue a termination notice and at subsection (f) 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—



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;

23. The letter from Nairobi City County provided for the following alterations in relation to the premises; Repair of leaking roof for the premises and provision of gutters and downpipes, repair of all signs of leakages and dampness in the premises, clean by repainting all dirty wall surfaces, service all fire extinguishers and observe general cleanliness at all times.
24. The Landlord was however required to provide Nairobi City County with approved building plans, a structural engineer's report on the soundness of the building and fire risk assessment as per the letter.
25. Based on the analysis above and the evidence provided, the landlord has not provided any documentation that proves the intention to renovate other than the letter which also makes reference to documents that need to be provided for the renovation to be carried out.
26. The tribunal also notes that the proposed renovations can be carried out while the Tenant is still in occupation of the premises and as guided by section 7(f) above, the tenant need not vacate the premises.
27. On the question raised in the Tenant's submissions dated 5<sup>th</sup> March 2024 as to the validity of the Notice because it was drawn by an advocate who was struck off the roll, the tribunal notes that the Tenant filed a Notice of Withdrawal dated 2<sup>nd</sup> November 2023 withdrawing the said application therefore the tribunal cannot address itself on the issue as its no longer on record.
28. From the foregoing, the tribunal allows the Tenant's Notice of Motion Application dated 26<sup>th</sup> October 2023 and the reference dated 1<sup>st</sup> November 2023 and orders as follows;

#### **I. orders**

- a. That the Landlord's Notice dated 27<sup>th</sup> April 2023 is invalid for want of reasoned grounds for eviction.
- b. The Tenants application and Reference dated 26<sup>th</sup> October 2023 is allowed in terms of prayers 4, the Landlords Application dated 5<sup>th</sup> October 2023 is dismissed.
- c. Landlord is given liberty to serve a fresh notice when they are ready with Drawings, Approvals and are in Funds.
- d. The Tenant to remain in occupation of the premises till such time.
- e. Each party shall bear their own costs.

**HON. A MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 25<sup>TH</sup> DAY OF APRIL 2024 IN THE PRESENCE OF MWIKALI FOR NDIRAGUA FOR THE TENANT AND RUTO FOR THE LANDLORD.**

**HON. A MUMA**

**MEMBER**



## **BUSINESS PREMISES RENT TRIBUNAL**

