



**Ereto Plaza Limited v Tai Eagle Group Limited (Tribunal Case
E147 of 2022) [2023] KEBPRT 1306 (KLR) (4 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1306 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E147 OF 2022
CN MUGAMBI, CHAIR
MAY 4, 2023**

BETWEEN

ERETO PLAZA LIMITED LANDLORD

AND

TAI EAGLE GROUP LIMITED TENANT

RULING

1. The landlord's application dated 31.10.2022 seeks orders that the Honourable court be pleased to terminate the tenancy between the parties herein and to order the tenant to pay rent arrears to the landlord amounting to Kshs. 1,707,421/= and the accruing rent until possession of the demised premises is granted to the landlord. The Applicant has also sought an order that the tenant be ordered to vacate the suit premises failing which an order of eviction should be issued against it.
2. Whereas the application is not opposed, I do however note that the Applicant seeks to terminate the tenancy between it and the tenant.
3. I have also noted that the tenancy between the parties herein is a controlled tenancy within the meaning of Section 2 of Cap 301 as although the tenancy is for a period of five years and six months, it contains provision for termination otherwise than for breach of covenant within the years from the commencement thereof. Specifically, clause 13 of the letter of offer dated 23.9.2015 provides as follows;-

“The tenancy will be terminated upon the breach of the express terms of lease agreement or any ground upon notice of not less than three (3) months or by expiration of time.”
4. The tenancy being a controlled tenancy, the Applicant in terminating the same is required as a matter of law to abide by the provisions of Section 4 of Cap 301 which where relevant provides as follows:-



Section 4(1) “notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated and no term or condition in or right in service enjoyed by the tenant of any such tenancy shall be altered otherwise than in accordance with the following provisions of this Act.

Section 4(2) “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.”

5. The Applicant/landlord, though desirous of terminating the tenancy between itself and the tenant, has not issued to the tenant the mandatory statutory notice required under the stated section of Cap 301. The landlord’s prayer for termination of tenancy is therefore pre-mature and cannot be granted, it is declined.
6. As the Respondent has not in any manner challenged the landlord’s claim to rent arrears, I will allow the same and in the same breath allow the Applicant to levy distress for the rent arrears in the sum of Kshs. 1,707,421/= and the accruing rent.
7. The Applicant/landlord’s complaint is allowed in the terms above.
8. The landlord will have the costs of the complaint and the application assessed at Kshs. 50,000/=.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 4TH DAY OF MAY 2023.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

PARA 4.

5.2023

In the presence of;

Ms Barmao for the landlord/Applicant

In the absence of the tenant/Respondent

