



**Wainaina v Moiben & another (Tribunal Case E111 of 2023)  
[2024] KEBPRT 662 (KLR) (Civ) (6 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 662 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E111 OF 2023  
A MUMA, MEMBER  
MAY 6, 2024**

**BETWEEN**

**SOLOMON WAINAINA ..... TENANT**

**AND**

**JACKSON MAIYWA MOIBEN ..... 1<sup>ST</sup> LANDLORD**

**GLADYS WAMBOI ..... 2<sup>ND</sup> LANDLORD**

**RULING**

**A. Parties And Representatives**

1. The Applicant, Solomon Wainaina is the occupant of the suit property being Plot K-4 Makutano Town located within Kapenguria Town in West Pokot County (hereinafter the Tenant).
2. The Applicant represents himself in this matter.
3. The Respondents, Jackson Maiywa Moiben and Gladys Wamboi are the Landlords of the suit property (hereinafter the Landlords).
4. The firm of Samba & Co. Advocates represent the Respondents in the matter.

**B. Background Of The Dispute**

5. The Tenant moved this tribunal vide a Reference dated 6<sup>th</sup> November 2023 on the grounds that he has been a Tenant of the Landlords and the Landlords were wrongfully terminating this tenancy.



### C. The Tenant's Claim

6. The Tenant claims that the Landlord issued the Tenant with a Notice to Terminate/alter terms of the tenancy dated 25<sup>th</sup> September 2023 purposed to take effect from 1<sup>st</sup> December 2023.
7. The Tenant further avers that he has been a tenant of the Landlord dutifully paying a monthly rent of Kshs. 12,000.
8. It is therefore the Tenant's case that the Landlord's Notice Terminate dated 25<sup>th</sup> September 2023 is invalid and the same should be disallowed by the tribunal.

### D. The Landlord's Claim

9. It is the Landlords' case that they served the Termination Notice according to the provisions of the law in Section 4(2) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Chapter 301 Laws of Kenya.
10. Additionally, the Landlords aver that the Notice of Termination was issued on the ground that they intend to demolish and reconstruct the suit premises to create one wholesale and retail business which will require substantial work of construction only achievable by obtaining vacant possession of the suit.
11. Moreover, the Landlords claim that the Tenant failed to notify them of his unwillingness to comply with the Notice and only served them the Reference on 21<sup>st</sup> February 2024.
12. The Landlords further claim that the other tenants have complied with the Notice and it is only the Applicant/Tenant herein who has refused to comply.

### E. List of Issues for Determination

13. I have carefully perused the material placed before this court by the parties and it is my considered opinion that the only issue that falls for determination is whether the Notice issued by the Landlord is valid.

### H. Analysis & Determination

14. 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.

15. 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

16. In the case of [Manaver N. Alibhai T/A Diani Boutique v 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.”

17. In this case the Landlords issued the tenant with a Notice to terminate tenancy on 25<sup>th</sup> September 2023 which was to take effect from 1<sup>st</sup> December 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](#).
18. The main question for determination that remains before this Tribunal is with regards to the substance of the said Notice.
19. The Landlord in his Notice stated that the reason for termination is to enable him carry out demolition and reconstruction of the suit premises meant to create one wholesale and retail business which will require substantial work of construction only achievable by obtaining vacant possession of the suit.
20. 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;

21. However, these grounds must be supported by evidence. In this case, nothing has been placed before this Court to demonstrate the Landlords’ intention to renovate, which renovation cannot be done without obtaining possession of the premises.
22. In the absence of such evidence, this Tribunal is not in a position to verify the Landlords’ claim or intention to renovate. Therefore, the Notice of Termination dated 25<sup>th</sup> September 2023 is invalid for want of reasons.

## **I. Orders**

23. The upshot is that the Tenant’s Reference dated 6<sup>th</sup> November 2023 is hereby upheld. Each party to bear their own costs.

**HON. A MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Ruling dated, delivered and signed at Nairobi on this 6th day of May 2024 in the presence of Solomon Wainaina Tenant in person and Nafula holding brief for Samba for the Landlord.

**HON. A MUMA**

**MEMBER**



## **BUSINESS PREMISES RENT TRIBUNAL**

