



**Katamu v Malanda (Tribunal Case E037 of 2024)  
[2024] KEBPRT 864 (KLR) (20 June 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 864 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E037 OF 2024  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
JUNE 20, 2024**

**BETWEEN**

**KENNEDY KATAMU ..... APPLICANT**

**AND**

**JONATHAM MALANDA ..... RESPONDENT**

**JUDGMENT**

1. The Tenant originated these proceedings by his reference dated 26<sup>th</sup> February 2024. The same was anchored under Section 6 of the Landlord and Tenant shops, hotels and catering establishments) Act (Cap 301) hereinafter “the Act” he simply requested that:-

“The Tribunal to investigate the matter and determine the issues involved”.
2. The Reference was triggered by the landlord’s notice of termination of tenancy dated 13<sup>th</sup> February 2024. The same was intentioned to take effect on the 1<sup>st</sup> May 2024. The grounds for the termination were stated to be:-

“That the Tenant has refused to pay rent. He has rent arrears of Kshs.6,000/-. Effort to recover the arrears has failed. I also want to do major renovations to the business premises. I request the rent Tribunal court and OCS Matungu Police Station to order the Tenant to pay all the rent arrears and vacate the Business Premises for renovation to commence”.
3. In response to the reference, the Landlord filed what he referred to as “supplementary affidavit” we deduce that it should have been a Replying Affidavit. The same was sworn on the 28<sup>th</sup> February 2024. The dispositions thereof were to the effect that:-
  - i. The Tenant was in rent arrears at Kshs.6,000/- for the months of November and December, 2023 and January and February 2024 at Kshs.1,500/- per month.



- ii. The Tenant was falling into rent arrears despite never having had a rent increment since the years 2016.
  - iii. He needed to carry out major renovations at the premises and the Tenant was very rude to him.
  - iv. The rent being paid by the Tenant did not make any business sense.
4. On his part, the Tenant filed what he referred to as “further Affidavit to the Replying Affidavit dated 28<sup>th</sup> February 2024”. The same was sworn on the 2<sup>nd</sup> April 2024. He asserted that:-
- i. He took possession of the premises in the year 2016 and the same was in good condition and did not require any renovations.
  - ii. Was not in any rent arrears and had paid rents upto the month of April, 2024 (annexture “KK2”).
  - iii. The Landlord wanted him out so that he could install his wife at the premises.
5. Both parties testified in court as TW1 and LLW1 respectively and rehearsed their sentiments as exemplified in their Affidavits as aforestated herein. From the overall review of all the evidence on record, it is our view that the issues for determination in this matter are the following:-
- A. Whether the notice of termination dated 13<sup>th</sup> February 2024 is lawful.
  - B. Who should bear the costs of the suit.

**ISSUE NO. A- Whether the notice of termination of Tenancy dated 13/2/2024 is lawful.**

6. The said notice was founded on two limbs. Non payment of rent and need to renovate the premises. At the outset, it is apparent that the notice is compliant with the requirements of Section 4(2), 4(4) and 7 of the Act and also Regulation 4(1) of the Regulations to the Act. What we are now called upon to consider is whether the grounds relied upon for the termination are valid in law.
7. On the claim that the landlord intends to carry out major renovations at the premises, the same is anchored on Section 7(1)(f) of the Act. The same provides that:-
- “On 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”.
8. From the evidence of the landlord, there is not even the remotest insinuation that he intended to demolish or reconstruct the premises or part of it. He only indicated that there was a leakage that needed to be fixed. In our view, if at all the leakage existed and which was denied by the Tenant, the later did not require to deliver vacant possession of the premises. Leakages as we know them require very limited time to fix.
9. The landlord never also indicated that there was any further renovations that were required on the premises, the extent of such renovations, development plans for the same and the cost implications. He did not also provide any evidence of financial preparedness to effect the same. In our view, this ground for termination was far fetched and without legitimacy in the eyes of the law.



10. In the locus classicus case of *auto Engineering Ltd – vs- M. Gonella & co. LTD (1978)* eKLR the court laid down the principles required to establish the ground of need to “demolish and reconstruct” it held that:-

“In such circumstances the court must be careful to see that Section 30(1) (f) is fully satisfied before it allows him to get possession. For this purpose the court must be satisfied that the intention to reconstruct is genuine and not colourable, that it is a firm and settled intention not likely to be changed. That the reconstruction is of a substantial part of the premises, indeed so substantial that it cannot be thought to be a device to get possession, that the work is so extensive that it is necessary to get possession of the holding in order to do it and that it is intended to do the work at once and not after a time”.

11. The 2<sup>nd</sup> limb of the notice is that the Tenant was in rent arrears of Kshs.6,0000/- equivalent to four months rent at the time the termination notice was issued. The Tenant has denied that. Though the tenant provided what he termed as an Mpesa statement (annexture KK2). The same were merely transactional messages. They did not indicate for which months the payments were made.
12. One message was for a payment of Kshs.3,000/- made on the 12/3/2024 and the other was for Kshs.1,500/- made on the 2/4/2024. The 1<sup>st</sup> message was a clear demonstration that there was some rent being paid in arrears. The landlord in his evidence stated that the Tenant had been in rent arrears for the months of November and December, 2023 and January and February, 2024. The Tenant except for generalized rebuttals did not provide any evidence to demonstrate any payment of rent for the four(4) months as claimed by the landlord.
13. It is a cardinal obligation of the Tenant to pay rent on time and as it falls due. Breach of the same denies such a tenant protection by this court. In the case of *Samuel Kipkori Ngeno & Another – vs- Local authorities Pension Trust (Registered Trustees) and Another* the court held that:-

“The temporary injunction sought in the present application is an equitable remedy at the court’s discretion. He who comes to equity must come with clean hands. A tenant who is in huge arrears of rent is underserving of the court’s discretion. The court cannot be the refuge of a tenant who fails to meet his principle obligation of paying rent as and when it becomes due”.

14. It is our view that the landlord has a right under the law to seek to terminate the tenancy herein for failure by the Tenant to meet his cardinal obligations. He allowed himself to fall into rent arrears for four months. Section 7 (1) (b) of the Act provides the following as a ground for the termination of a tenancy:-

“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”.

We would therefore allow the notice of termination of tenancy dated 13<sup>th</sup> February 2024 as the same is well grounded in law.



**ISSUE NO. C- Who should bear the costs of this suit.**

15. The proviso to Section 27 of the Civil Procedure Act provides that:-

“Provided that the costs of any action cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order”.

We have no reason to deviate from the wisdom of that proviso to Section 27 aforesaid and will allow costs of the reference to the landlord.

16. In the final analysis, the orders that commend to us are the following:-

- i. That the reference dated 26<sup>th</sup> February 2024 is dismissed.
- ii. That the notice of termination dated 13<sup>th</sup> February 2024 is lawful and the same is allowed and the Tenant is directed to evacuate from the demised premises on or before the 30<sup>th</sup> June 2024 and in default be evicted with the assistance of the OCS Matungu Police Station at his cost.
- iii. That the tenant shall pay all the rents in arrears for the months of between November, 2023 and June, 2024 both months inclusive less the amounts so far paid and in default the landlord to levy distress in recovery thereof.
- iv. The Tenant shall pay to the landlord costs assessed at Kshs.10,000/-.

Those are the orders of the court.

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF JUNE, 2024.**

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI**

**PANEL CHAIRPERSON MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL BPRT**

Judgement delivered in the presence of Mr. Matete counsel for the landlord and in the absence of the Tenant though aware of the date.

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI**

**PANEL CHAIRPERSON MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL BPRT**

