



Ndoho v Amata (Tribunal Case E843 of 2023) [2024] KEBPRT 1102 (KLR) (2 July 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1102 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E843 OF 2023
P MAY, MEMBER
JULY 2, 2024

BETWEEN

EMILY WAMBUI NDOHO APPLICANT

AND

BONIFACE KAFURE AMATA RESPONDENT

RULING

1. The present proceedings were commenced by the landlord through the reference dated 30th August, 2023. Contemporaneous with the reference, the landlord filed a notice of motion on an even date which sought the following orders *inter alia*:
 - a. Spent
 - b. That the respondent/tenant be and is hereby ordered to hand over vacant possession of the suit premises at Block A LR No. 36/V/154 Nairobi.
 - c. That the OCS Pangani Police Station to ensure compliance of the orders
 - d. That this Honourable Court be pleased to issue such further orders or directions as it deems fit in the circumstances
 - e. That the costs of the application be provided for.
2. The application was premised on the grounds on the face of it and those enumerated in the supporting affidavit sworn by the applicant. The landlord stated that the tenant was served with a notice to terminate tenancy on 27th April, 2023 which notice had since lapsed and no objection had been filed. It was the landlord's contention that the tenant however continued to occupy the demised premises in blatant disregard to the notice issued. The landlord averred that they had suffered losses due to the tenant's actions as he did not pay rent and had fallen into arrears to the tune of Kshs. 107,000/-.



3. The application was placed before the Tribunal on 5th September, 2023 whereby the same was certified urgent and fixed for inter- partes hearing. The application was listed for hearing on 27th September, 2023 whereby the tenant was absent and the Tribunal proceeded to allow the application in favour of the landlord.
4. The tenant was aggrieved by the orders issued by the Tribunal and sprang into action by filing an application under certificate of urgency seeking to set aside the said orders on 11th October, 2023. The tenant admitted to having received the notice to terminate tenancy dated 27/4/2023 but ignored the same as there did not exist a tenancy relationship between them and the landlord herein. He denied occupying the landlord's premises and was categorical that the space they were in occupation was public road reserve.
5. The tenant's application was placed before the Tribunal on 13/10/2023 whereby the tenant was granted an interim order of stay pending the inter partes hearing. The landlord filed their response in opposition to the tenant's application for stay of the orders issued giving a detailed chronology of the actions they took to serve the tenant. It was the landlord's contention that the tenant was present in the virtual court during the hearing but failed to address the presiding judicial officer. The parties elected to canvass the application by way of written submissions.
6. Having considered the parties' pleadings, affidavits and submissions and having considered the relevant legal framework, the sole issue for determination before this Honourable Tribunal is: Whether the Landlord's notice of termination of Tenancy dated 27th April, 2023 is lawful and valid?
7. The Landlord mainly seeks from this Honourable Tribunal an order permanently evicting the Tenant from the suit premises. The Landlord placed reliance on Section 7 of the Act which outlines the grounds on which a Landlord may seek to terminate a tenancy.
8. The Landlord issued the Tenant with a Notice of termination of the tenancy dated 27/4/2023, pursuant to section 4(2) of the of the [Landlord and Tenant \(shops, Hotels and Catering Establishment\) Act](#).
9. The position of the law on the issue of a termination notice is now settled. The Court in [Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited](#), Civil Appeal No. 203 of 1994, stated that: -

“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.”
10. It is evident that the notice of termination of the tenancy herein was in Form A as prescribed by the Act. further, the notice of termination of the tenancy was to take effect on 1st July 2023, being a period exceeding two months as required by the Act.



11. Having established that the notice of termination of the tenancy was in the prescribed form, I shall proceed to analyze the substance of the notice with regard to the grounds of termination of the tenancy as follows:
12. Section 7(1) (b) of the said Act provides one of the grounds for seeking to terminate tenancy by a landlord to be a tenant's default 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. This is one of the grounds cited by the landlord.
13. The landlord has provided a statement of account indicating the accrued rent arrears. The tenant has disputed to the ownership of the demised premises. The dispute on ownership is one that is beyond the Tribunal's jurisdiction. All that the parties were required to prove was the existence of a tenancy relationship which was controlled. The landlord has given documentation to the effect that the tenant made payments for rent and committed himself to the terms of the tenancy. The landlord has thus discharged their duty as required under sections 107 and 108 of the Evidence Act.
14. The Tribunal having made the above findings, it proceeds to interrogate the actions of the tenant upon receipt of the said notice of termination. Section 6 (1) of the Act is most important, as it clearly provides that:-

“A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section (5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal:

Provided that a Tribunal may, for sufficient reason and on such conditions as it may think fit, permit such a reference notwithstanding that the receiving party has not complied with any of the requirements of this section.” (Emphasis provided)
15. For avoidance of doubt, Section 2(1) defines a “receiving party” as “a tenant or a landlord of a controlled tenancy to whom a tenancy notice is given”. From the aforesaid provision, therefore, the recipient of a tenancy notice may elect to do one of four things. Either:-
 - a. Do nothing;
 - b. Serve an objection upon the requesting party voicing his disagreement with the changes proposed in the tenancy notice then do nothing further or;
 - a. Send an objection and lodge a reference before the tribunal for a formal determination of the dispute or;
 - a. Fail to send an objection but proceed to lodge a reference in the tribunal.
16. Section 6(1) above makes this abundantly clear. It is only the filing of a reference which suspends time with regard to the tenancy notice. (The only aspect that serves to suspend time with regard to the tenancy notice is the filing of a reference). Any other act short of lodging a reference not even service of an objection has no effect on the running of time stipulated in the notice. The notice herein therefore took effect on 1st July, 2023.
17. The upshot of the above is that the landlord's application dated 30th August, 2023 is allowed with the landlord awarded costs assessed at Kshs. 30,000.



18. Reference settled in similar terms.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 2ND DAY OF JULY, 2024

HON. PATRICIA MAY

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Onyango for the Respondent and in the absence of the Applicant

