



Dirie & Sons Company Limited v Bura Ranch (DA) Company Limited (Tribunal Case 35 of 2021) [2023] KEBPRT 199 (KLR) (Civ) (11 April 2023) (Judgment)

Neutral citation: [2023] KEBPRT 199 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE 35 OF 2021
A MUMA, VICE CHAIR
APRIL 11, 2023**

BETWEEN

DIRIE & SONS COMPANY LIMITED APPLICANT

AND

BURA RANCH (DA) COMPANY LIMITED RESPONDENT

JUDGMENT

A. Parties and representatives

1. The applicant Dirie & Sons Company Limited is the tenant and rented space on the suit property Plot No. 14205 Taita/Taveta where the landlord is Bura Ranch Company Limited (hereinafter known as the 'tenant')
2. The firm of Garane & Somane Advocates represent the applicant/tenant in this matter.
3. The respondent is the landlord and the owner of the suit property and rented out space to the tenant on the suit property to the tenant. (hereinafter known as the 'landlord')
4. The firm of Otieno B.N & Associates Advocates represent the Landlord/Respondent in this matter.

B. The dispute background

5. The Landlord and the tenant entered into a tenancy agreement dated January 11, 2010 for a period of ten years from January 1, 2010 for a monthly grazing fee of Kshs. 60,000.00.
6. The above lease expired and the parties entered into another agreement on January 27, 2018 extending the term of the previous agreement for another five years.



7. The Landlord served the tenant with a notice to terminate tenancy dated November 26, 2020 requiring them to hand over vacant possession of the premises within six months being June 1, 2021.
8. As a result, the Tenant has filed a Reference and a Notice of Motion Application under dated September 14, 2021 under section 12 (4) of the [Landlords and Tenants \(Shops, Hotels and Catering\) Establishments Act](#) Cap 301. The Tenant is seeking that this Honourable Tribunal grants orders restraining the Landlord from interfering with their quiet possession and occupation of the premises pending the hearing and determination of this matter.

C. Jurisdiction

9. The Jurisdiction of this Tribunal is in not in dispute.

D. The tenant's claim

10. The has filed a Reference and a Notice of Motion Application dated September 14, 2021 seeking restraining orders against the Landlord.
11. The Tenant has filed submissions in support of their application.

E. The respondent's claim

12. The Respondent has filed a replying affidavit dated May 11, 2022 in response to the tenant's application averring that the Notice was rightfully issued and adhered to the terms of the agreement.
13. They have also filed their submissions in opposition to the above application.

F. List of issues for determination

14. The issues raised for determination are as follows;
 - a) Whether the Notice to Terminate tenancy issued by the Landlord is legal and should be upheld?

G. Analysis and findings

Whether the Notice to Terminate tenancy issued by the Landlord is legal and should be upheld?

15. Section 4 (1) & (2) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) which states as follows:
 - (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 or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with the following provisions of this Act.
 - (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.
16. In the present case, the tenant was served with a notice to terminate tenancy by the landlord dated November 26, 2020 requiring that the tenant hand over vacant possession of the premises with effect



from June 1, 2021. The tenant alleges that the landlord was in breach of the aforementioned tenancy agreement and that the notice should be dismissed.

17. The landlord has highlighted that in issuing the said notice they placed reliance on clause 4 (b) of the agreement dated January 11, 2010 which provides as follows;

That either party may cause the termination of these presents by giving six (6) months' notice to be delivered to a Director of the receiving party personally or sent by prepaid post to the last known address of the party intended to be served.....

18. I have inspected the said notice dated November 26, 2020. It accords the tenant six months within which to hand over vacant possession to the landlord.
19. The parties are in agreement that the tenancy relationship falls within the ambit of a controlled tenancy. As such any notice must adhere to the requirements of the above highlighted section 4 of [cap 301](#).
20. I have compared the notice and the requirements of [cap 301](#) and I observe that the notice period as stipulated in both the agreement and the notice satisfy the minimum statutory required period of two months. As a result, the notice is deemed to be valid as per the requirements of Section 4 of [cap 301](#).
21. The tenant has questioned the validity of the notice on the grounds that the landlord has breached the terms of their agreement. This arising by virtue of the fact that there exists a tenancy agreement between the landlord and a third party. The tenant alleges that the existence of this agreement is what is pushing the landlord to evict them.
22. I have perused the alleged agreement as annexed by the tenant in their supporting affidavit dated August 17, 2013 between the landlord and the third-party being Mr. Peter Mbogho Mwang'ombe. An examination of the execution part by the landlord in the agreement between the landlord and the tenant herein and that of the landlord and the purported third party raises some doubt.
23. The signatories in the agreement with the tenant herein seem different from those in the agreement with the third-party. I find this questionable seeing as the landlord is a company and as such only the duly authorized representatives of the company can execute documents. I therefore find that the allegations by the tenant have not been sufficiently proved with regards to the existence of an agreement with a third-party.
24. In addition to the foregoing, I also take note of the fact that the notice was issued on November 26, 2020. The present reference before the Tribunal was filed on September 14, 2021. Section 4(5) of [cap 301](#) requires that upon issuance of a notice to terminate tenancy the receiving party shall notify the requesting party in writing, within one month after the date of receipt of the notice, whether or not he agrees to comply with the notice.
25. The reference opposing the notice issued by the landlord was filed ten months later which offends the above-mentioned provisions of [cap 301](#). The tenant did not file an application seeking to file the reference out of time neither did they request the Tribunal for extension of time within which to file the reference.
26. In light of the foregoing, I find that the notice issued by the landlord is valid and the tenant has failed to sufficiently prove otherwise before this Tribunal.

H. Orders

- a. The upshot is that the Tenant's Reference and Application dated September 14, 2021 are hereby dismissed in the following terms:



- b. The Notice issued by the Landlord dated November 26, 2020 is hereby declared valid.
- c. The tenant shall hand over vacant possession to the landlord on or before May 30, 2023 OCS Mwatete Police Station to assist in Compliance.
- d. Each party shall bear their own Costs.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 11TH DAY OF APRIL 2023 IN THE ABSENCE OF TENANT AND LANDLORD.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

