



**Roofspec & Allied Works Limited v Jozo Limited (Tribunal Case
E738 of 2022) [2023] KEBPRT 8 (KLR) (20 January 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 8 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E738 OF 2022
A MUMA, VICE CHAIR
JANUARY 20, 2023**

BETWEEN

ROOFSPEC & ALLIED WORKS LIMITED TENANT

AND

JOZO LIMITED LANDLORD

RULING

A. Parties and Representatives

1. The Applicant Roofspec & Allied Works Limited is the tenant and had rented space on the Suit Property located on Plot No 12596/85 in Industrial Area for the business. (hereinafter known as the 'tenant')
2. The firm of CNK Advocates LLP represent the Tenant/Applicant in this matter.
3. The Respondent Jozo Limited is the landlord and rented out space for the business in the suit property to the tenant (hereinafter the "landlord")
4. The firm of Mutimu Kang'atta & Co Advocates represent the Respondent in this matter.

B. The Dispute Background

5. The Tenant has filed a Reference and a Notice of Motion application dated August 12, 2022 under section 12 (4) of the [Landlords and Tenants \(Shops, Hotels and Catering\) Establishments Act](#), cap 301. The Tenant was seeking that this Honourable Tribunal grants orders restraining the Landlord from selling, carrying away or disposing of their auctioned goods pending the hearing and determination of this matter.



C. The Tenant's Claim

6. The tenant filed a Reference and a Notice of Motion Application dated August 12, 2022 to which she obtained interim reliefs.

D. The Landlord's Claim

7. The Landlord has filed a Replying Affidavit dated October 11, 2022.
8. The Landlord has filed submissions and the matter was fixed for Ruling on January 20, 2023.

E. List of Issues For Determination

9. It is the contention of this Tribunal that the issues raised for determination are as follows;
 - I. Whether the Notice was valid and duly served?

F. Analysis and Findings

Whether the Notice was valid and duly served?

10. The matter at hand before the Tribunal arose as a result of a reference filed by the tenant where they were seeking that the Landlord be restrained from disposing off of property that was auctioned by the Landlord.
11. The Tenant claims that they were served with a Proclamation Notice dated August 3, 2022 by the Landlord. They aver that prior to that they had not been served with a Notice to Terminate tenancy and as such the Proclamation was done unlawfully. They acknowledge that they were in arrears as averred by the Landlord but that they were prepared to enter into an agreement with the Landlord on how to clear the arrears.
12. In response the Landlord in their Replying Affidavit has disputed the claim that they did not issue a Notice to Terminate tenancy. they have provided before the Tribunal a Noticed dated March 28, 2022 which was to take effect on June 1, 2022. They have additionally provided before this Tribunal proof that the same was duly served to the Tenant as per their last known address through a Certificate of Posting of even date with the Notice. Further the Landlord has annexed communication between themselves and personnel from the Tribunal where they had inquired whether the Tenant filed a Reference opposing the Notice.
13. In light of the foregoing and the evidence produced by the Landlord, the Tribunal is of the opinion that the Landlord fulfilled their mandate and took reasonable steps to ensure that the tenant was served with the Notice to terminate Tenancy. Additionally, I have examined the validity of the Notice and I hold that it was valid. The Notice met the requirements as stipulated under section 4 of cap 301, it accorded the Tenant two months within which to vacate.
14. It has also come to the attention of the Tribunal that at the time of filing this present reference by the Tenant, the Notice period had lapsed and as such the Notice is deemed to have taken effect. The Reference was filed on August 12, 2022 while the Notice took effect on June 1, 2022. The implication of this is that the Tenancy Relationship between the parties had legally been terminated by virtue of the Notice taking effect.



15. Having stated the above, The Tribunal is not convinced that the tenant was not duly served with the Notice dated March 28, 2022 for reasons stated above. As such, I uphold the validity of the Notice dated 28th March and by extension grant the Landlord leave to proceed to distress for the arrears owed.

G. Orders

- a. The upshot is that the tenant's reference and application dated August 12, 2022 are hereby dismissed;
- b. The landlord's notice dated March 28, 2022 is hereby declared valid and duly served.
- c. The tenant shall pay the arrears as claimed by the Landlord on or before January 31, 2023 failure to which the same shall be offset from the deposit.
- d. The landlord shall take back vacant possession in the next 30 days.
- e. No orders as to costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 20TH DAY OF JANUARY 2023 IN THE ABSENCE OF THE TENANT AND KANG'ATTA FOR THE LANDLORD.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

