



**Ashikhanga v Provida Africa Limited (Tribunal Case E251 of 2024)
[2024] KEBPRT 828 (KLR) (19 June 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 828 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E251 OF 2024
A MUMA, MEMBER
JUNE 19, 2024**

BETWEEN

FLAVIAN KEPESA ASHIKHANGA TENANT

AND

PROVIDA AFRICA LIMITED LANDLORD

JUDGMENT

A. Parties And Their Representatives

1. The Applicant Robert Flavian Kepesa is the tenant and rented space on the suit premises within Mirema area within Nairobi County (“the suit property”) belonging to the Respondent herein. (hereinafter the “tenant”).
2. The firm of Osoro Juma & Company Advocates represents the Tenant in this matter.
3. The Respondent, Provida Africa Limited is the owner of the suit premises and hence the Landlord thereof. (hereinafter the “landlord”)
4. The Firm of Muthoni Ahago Advocates represents the Landlord in this matter.

B. The Dispute Background

5. The current suit was instituted by the tenant vide a Reference and a Notice of Motion Application under Certificate of Urgency dated 20th February 2024 under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\)](#) seeking orders prohibiting the Landlord from unlawfully harassing, intimidating and threatening to evict the tenant and interfering with the lawful enjoyment of the suit premises.
6. The Respondents filed a Response to the Tenant’s Reference and a Counter-Reference dated 11th March 2024 and a Replying Affidavit evenly dated denying the Tenant’s claims.



C. Jurisdiction

7. The jurisdiction of this Tribunal is not in dispute.

D. The Tenant/applicant's Claim

8. The Tenant claims that she entered into a tenancy agreement with the Landlord on 30th January 2024 where she was expected to pay monthly rent at a rate of KShs. 10,000.00 and a deposit of KShs. 24,500.00 which she has been paying.
9. In her submissions dated 18th April 2024, the Tenant submits that the Landlord issued her with a notice to vacate dated 13th February 2024 and closed the business premises denying her access to her goods with the sole intention of evicting her from the suit premises.
10. It is the Tenant's claim that the Landlord re-opened the said premises upon being served with a demand letter but has continued to threaten the her with eviction contrary to the provisions of [Cap 301](#).

E. The Landlord/respondent's Claim

11. In its Response to the Tenant's Reference, the Landlord denies all allegations made by the Tenant and a Cross-reference wherein they claim that the Tenant has been breaching the terms of the tenancy agreement dated 30th January 2024.
12. The Landlord claims that at the time the Tenant took possession of the premises, there was a verbal agreement to use the premises as a wines and spirits shop which would be run as a take away business. However, the Tenant breached this term by failing to pay rent on time, using the premises as a bar by placing tables and chairs for customers, allowing her customers to park within the premises and causing nuisance to the Tenants of adjoining premises.

F. Issues For Determination

- a. Whether the tenant's Reference and Application should be allowed?

G. Analysis And Determination

13. The Tenant's claim is based on the grounds that the tenancy relationship between her and the Landlord is a controlled tenancy and hence, she has a right to seek protection of this Court from the Respondent's threat of eviction which is illegal and contrary to [Cap 301](#), Laws of Kenya
14. It is trite law that termination of a controlled tenancy should be effected as per Section 4 of [Cap 301](#) which requires that:
 1.
 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.
 3.
 4. 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:



Provided that—

- i. where notice is given of the termination of a controlled tenancy, the date of termination shall not be earlier than the earliest date on which, but for the provisions of this Act, the tenancy would have, or could have been, terminated;
 - ii. where the terms and conditions of a controlled tenancy provide for a period of notice exceeding two months, that period shall be substituted for the said period of two months after the receipt of the tenancy notice;
 - iii. the parties to the tenancy may agree in writing to any lesser period of notice.
5. A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and requires the receiving party to 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.
15. This Tribunal notes that the Landlord issued the Tenant with a notice to vacate dated 13th February 2024. This Court has perused the said notice of termination and notes that the same is in form of a letter and not in a prescribed form as required in the termination of a controlled tenancy.
16. Further, the reasons advanced for termination by the Landlord are that the Tenant has failed to pay rent on time by paying rent for February on 6th March 2024 and operating the liquor shop as a bar contrary to the agreement.
17. I have perused the Mpesa Statements produced by the Tenant and note that the Tenant made two payments. The first payment being the deposit of KShs. 24,500.00 on 30th January 2024 and the second one being rent of KShs. 20,000.00 on 6th March 2024 assumingly, being rent for the months of February and March.
18. This Court is convinced that the payment of KShs. 20,000.00 made on 6th March 2024 constitutes a breach of the tenancy agreement which requires the Tenant to pay rent before the 5th day of every month.
19. Although non-payment of rent is sufficient reason to terminate a tenancy under section 7 of [Cap 301](#), but the same should be for a period of not less than 2 months and further must be persistent, the said termination should be carried out as per the provisions of Section 4 as indicated above.
20. Further, the Landlord claims that operating the liquor shop as a bar has caused nuisance to the tenants of adjoining premises. However, this Court notes that the use of the business premises as per the tenancy agreement is commercial and does not strictly restrict the Tenant on operating a bar therein.
21. Where a written tenancy agreement exists, a verbal agreement providing further terms of the agreement cannot be stand. Further, the Landlord has not placed anything before this Court to demonstrate that the Tenants of adjoining premises are aggrieved or negatively affected by the operations of the Tenant's business.
22. In light of the foregoing, I am convinced that the notice of termination dated 13th February 2024 is invalid for want of both form and substance, contrary to Section 4 of [Cap 301](#).



H. Orders

23. The upshot is that the Tenant's Reference and Application dated 14th March 2024 is hereby allowed in the following terms:
- a. The Tenant shall remain in the premises and continue to pay rent as and when it falls due, that is, by 5th of every month.
 - b. The Landlord is hereby restrained from interfering with the quiet possession of the Tenant in any way.
 - c. Each party to bear their own costs.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling/Judgement dated, signed and delivered virtually by Hon A. Muma this 19th day of June 2024 in the presence of Gaturugu holding brief for Muthoni for the Landlord and Moige holding brief for Osoro for the Tenant.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

