



**Kihumba v Mt Sinai Agencies (Tribunal Case E177 of 2023)  
[2024] KEBPRT 1143 (KLR) (7 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1143 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E177 OF 2023  
M MAKORI, MEMBER**

**MAY 7, 2024**

**BETWEEN**

**JOSEPH KIHUMBA ..... TENANT**

**AND**

**MT SINAI AGENCIES ..... LANDLADY**

**RULING**

1. The present claim was filed vide a reference and an application dated 25<sup>th</sup> September 2023 supported by the supporting affidavit of Joseph Kihumba.
2. In response the landlady filed a replying affidavit dated the 2<sup>nd</sup> of April 2024 denying the claims and making claims that the rent chargeable is Kenya shillings Ten thousand (Ksh 10,000) and not Kenya shillings Eight thousand (Ksh 8,000) as claimed by the Tenant/Applicant and an existent rent arrears of Kenya shillings Thirty-six thousand (Ksh 36,000).
3. From the totality of the pleadings filed by parties and submissions several issues arise for determination. In arriving on a determination on the matter it is proper to establish the whether a valid notice has been issued and whether there exists rent arrears.

**i. Whether a valid notice to vacate was issued.**

4. For formal requirements of notice of termination of a tenancy I am guided by section 4(2) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 Laws of Kenya (hereinafter referred to as the “Act”) provides that; -

“ 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.”



5. Additionally, Section 4(4) provides that no tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, unless the terms and conditions of the tenancy provide for a period exceeding two months or the parties to the tenancy agree in writing to a lesser period of notice.
6. The two requirements therefore for a valid notice of termination of the tenancy is first, that the notice shall be in the prescribed form and secondly, that the notice shall not take effect until after the expiry of two months, or such notice period as may be agreed by the parties.
7. This was emphasized in the case of *Munaver N Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited* [1995] eKLR, where the Court of Appeal at Mombasa in finding that the notice of termination of the tenancy was void for failing to comply with Section 4 of the Act stated as follows;
 

“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 grounds on 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.”
8. Additionally, according to Section 4(2) mentioned above, the Notice of Termination of tenancy should be the prescribed form, specifically Form A, as provided for in the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966.
9. The Act further provides for the grounds on which the Landlord may seek to terminate the tenancy in Section 7 *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 Laws of Kenya the grounds stated under this provision and which are applicable herein include;
  - i. 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;
  - ii. that the tenant has committed other substantial breaches of his obligations under the tenancy, or for any other reason connected with the tenant’s use or management of the premises comprised in the tenancy; and
  - iii. that on the 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;
10. The tenant has provided a notice to vacate in form of a letter dated the 1<sup>st</sup> of September 2023 from the management of Mount Sinai Agency. The same purports to issue a two months’ notice to the tenant to vacate before the 1<sup>st</sup> of November 2024. The issuance of the notice is not disputed by the landlord.
11. A cursory look of the notice clearly shows that it is not in the recommended form A as provided for in the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966 and as such it is considered as an invalid notice.



**ii) Whether the landlord is entitled to the rent arrears as claimed?**

12. In his supplementary affidavit dated 8<sup>th</sup> April 2024 the tenant has made claim that he has been duly paying a rent amount of Kenya Shillings Eight thousand and an additional two thousand (ksh 2000) as water bills. In asserting the claim, he has attached an M-pesa statement showing payment.
13. The landlady through the directors replying affidavit deny the issuance of rent increment and assert that the rent has always been Kenya Shillings Ten thousand and that there are rent arrears amounting to Kenya shillings Thirty-six thousand. In asserting the claim, she has attached a copy of the tenants' statement and receipts.
14. Unfortunately, the landlady has only provided previous receipts of diverse months in 2022 and whereas her statement of rent payment shows that there has been rent payment in the year 2023 and in recent years, and as such the tribunal finds it impossible to solely rely on the said receipts as proof of payment.
15. From the statement, it is also clear that the Kenya shillings Thirty-six thousand (ksh 36,000) claimed by the landlord is as a result of an unaccumulated disputed sum of Kenya shillings two thousand (ksh 2,000) from the year 2022 to date.
16. The tenant has submitted sample receipts from 2018 to 2023 which include a recent payment in the month of October 2023 of a sum of Kenya shillings Eight thousand (ksh 8,000) and M-pesa statements from 2018 to date showing payment of Ksh 8,000 and 8,500 in a randomly alternating sequence.
17. The tribunal therefore finds it hard to comprehend the landlord's assertion that the rent has always been Kenya shillings Ten thousand (Ksh 10,000) yet she has been receiving a different sum of Kenya shillings Eight thousand (ksh 8000) and has never made claim of rent arrears until the filling of the suit.
18. As such the tribunal finds that the tenant having duly paid the sum of Kenya shillings (ksh 8,000) there exists no arrears as at the time of filling of the suit.
19. In the upshot and based on the foregoing the Tribunal finds that the reference by the Tenant is merited and makes the following orders; -
  - a. The Applicant's reference and notice of motion Application dated 8<sup>th</sup> January 2024 is allowed.
  - b. The Respondent, his servants, agents or any other persons acting on his behalf are hereby restrained from evicting, closing or interfering with Tenant/Applicant's quite enjoyment of the subject property subject to the payment of agreed rent and issuance of a valid notice.
  - c. Each party to bear their own costs of the application.

**HON. MIKE MAKORI - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON MIKE MAKORI  
THIS 7<sup>TH</sup> MAY, 2024 IN THE PRESENCE OF MR. MACHOKA FOR THE RESPONDENT/  
LANDLORD AND THE ABSENCE OF THE TENANT.**



**HON. MIKE MAKORI - MEMBER**  
**BUSINESS PREMISES RENT TRIBUNAL**

