



**Kotut & 2 others v Keiyo Housing Co-operative Society Limited  
(Tribunal Case E020 of 2020 & E021 & E019 of 2022 (Consolidated))  
[2023] KEBPRT 1384 (KLR) (10 November 2023) (Judgment)**

Neutral citation: [2023] KEBPRT 1384 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E020 OF 2020 & E021 & E019 OF 2022 (CONSOLIDATED)  
P MAY, MEMBER  
NOVEMBER 10, 2023**

**BETWEEN**

**LUKA KOTUT ..... 1<sup>ST</sup> TENANT  
SAMUEL KIMELI KIPLAGAT ..... 2<sup>ND</sup> TENANT  
JOSEPHINE J.BOSS ..... 3<sup>RD</sup> TENANT**

**AND**

**KEIYO HOUSING CO-OPERATIVE SOCIETY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The tenants approached the Tribunal by filing separate references dated 26-2- 2022 against the landlord. The references were filed in opposition to the landlord 's notices to terminate tenancy all dated 1<sup>st</sup> December, 2021 and which were to take effect on as from 1<sup>st</sup> March, 2022. The 3 references were consolidated and the same heard together as they stemmed from the same transaction.
2. The parties in the present proceedings have a checkered litigation history and have previously filed suits against each other some of which are still active before other fora. This was informed by the fact that the parties besides having the landlord and tenant relationship had other forms of relationship e.g the tenants were members of the Landlord cooperative society. This background will offer an important compass to the Tribunal in the determination of the present dispute as it has to only act within its demarcated jurisdiction.
3. The hearing of the reference proceeded on diverse dates and upon the close of landlord's case which marked the end of the hearing parties elected to file written submissions in support of their respective submissions. When I retired to draft this judgement, I considered pleadings filed and the accompanying documents while appreciating the context of the dispute and the special nature of relationship between the parties herein. I would proceed as follows:



### Summary of the tenants' case

4. The tenants in their testimonies all affirmed to being in occupation of the demised premises. They had occupied the premises over a length of time with the 1<sup>st</sup> tenant having occupied the premises for close to 4 decades while the 3<sup>rd</sup> tenant had occupied the premises for close to 13 years. The tenants confirmed that the terms of the tenancy had changed over the periods they have been in occupation with the rent increasing to reflect the inflation and market rates.
5. The tenants were all issued with notices to terminate tenancy dated 1<sup>st</sup> December, 2021 and which were to take effect on 1<sup>st</sup> March, 2022. They expressed their unwillingness to comply with the said notices and subsequently filed the present references against the landlord. The reasons advanced in the said notices were that the landlord intended to demolish the structures and build better structures, an exercise that could not be undertaken while the tenants were in occupation.
6. The landlord had issued the notices pursuant to communication made by the county government requiring them to carry out renovations. The said communication was later clarified to indicate that the county government had not condemned the premises. The landlord as per the tenants had convened members' meetings in the various zones where resolutions were passed to hand over the premises to a contractor to carry out demolition. The tenants stated that they had expressed their opposition to the same but they were overruled as the meetings were in their view biased and one sided.
7. The tenants stated that landlord was therefore not justified to issue them with notices and prayed that the Tribunal quash the same as they were invalid. The tenants admitted that the issue of demolition also formed the crux of the proceedings filed before the other fora.

### Summary of the landlord's case:

8. The landlord testified through its chairperson on 9<sup>th</sup> June, 2023. He admitted that the tenants indeed occupied the demised premises and were known to him. He stated that as a cooperative society that there was renewed calls for new investments thus during the members' meetings which were convened pursuant to the by- laws, resolutions were passed to the said effect.
9. During cross examination the landlord confirmed that the tenants were still occupying the premises and paying rent when due. He also informed the Tribunal that the parties had sued them at the ELC court but their suit was dismissed.
10. In reexamination, the landlord confirmed that during the meetings the members had ratified the decision to have the demised premises demolished. He states that the second letter from the county government was not addressed to them by the physical planner.

### Analysis

11. At the onset, it is prudent to state that the jurisdiction of this Tribunal is espoused under the provisions of Section 12 of Cap 301. The limits of the jurisdiction are also set out explicitly therein. It is important to note that this Tribunal only has jurisdiction to deal with disputes emanating from controlled tenancies.
12. It only follows that the Tribunal can only act within the limits of its jurisdiction as was aptly discussed in the case of; [\*Republic vs Business Premises Rent Tribunal & Another Ex- Parte Albert Kigera Karume\*](#)



[2015] eKLR cited with approval the case of; *Re Hebtulla Properties Ltd.* [1979] KLR 96; [1976-80] 1 KLR 1195 where the Court dealt with the provisions of section 12 of Cap 301 as follows:

“The tribunal is a creature of statute and derives its powers from the statute that creates it. Its jurisdiction being limited by statute it can only do those things, which the statute has empowered it to do since its powers are expressed and cannot be implied.... .... The powers of the tribunal are contained in section 12(1) of the Act and anything not spelled out to be done by the tribunal is outside its area of jurisdiction. It has no jurisdiction except for the additional matters listed under section 12(1)(a) to (n). The Act was passed so as to protect tenants of certain premises from eviction and exploitation by the landlords and with that in mind the area of jurisdiction of the tribunal is to hear and determine references made to it under section 6 of the Act. Section 9 of the Act does not give any powers to the tribunal, but merely states what the tribunal may do within its area of jurisdiction..... It would be erroneous to think that section 12(4) confers on the tribunal any extra jurisdiction to that given by and under the Act elsewhere. For example it is not within the tribunal’s jurisdiction to deal with criminal acts committed in relation to any tenancy nor is it within its jurisdiction to entertain an action for damages for trespass. These are matters for the courts and the tribunal cannot by way of a complaint to it by the landlord or tenant purport to deal with such matters. Section 12(4) of the Act must be read together with the rest of the Act and, when this is done it becomes apparent that the complaint must be about a matter the tribunal has jurisdiction to deal with under the Act and that is why the complaint has to relate to a controlled tenancy.... The Act uses the words “any complaint” and the only qualification is that it must be “relating to a controlled tenancy”.

13. Controlled tenancy has been defined at section 2 of the act as follows:

“controlled tenancy” means a tenancy of a shop, hotel or catering establishment—

- (a) which has not been reduced into writing; or
- (b) which has been reduced into writing and which—
  - (i) is for a period not exceeding five years; or
  - (ii) contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
  - (iii) relates to premises of a class specified under subsection (2) of this section

14. The parties having submitted to the jurisdiction of the honourable tribunal and based on the nature of the tenancy, the tenants are protected tenants. I will therefore proceed to assess the validity of the notices of termination issued on 1<sup>st</sup> December, 2021 against the provisions of CAP 301.

**a) Formal requirements of notice of termination of a tenancy.**

15. 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.”



16. 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.
17. 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 expiry of two months, or such notice period as may be agreed by the parties. 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.”

18. Based on the evidence tendered before this Honourable Tribunal, it is evident that the parties in their agreement did not make provision for the period of notice required before termination of the tenancy agreement. As such, section 4(4) of the Act as mentioned above applies, thus the default notice period for termination of the tenancy herein is two months.
19. The notice to vacate was issued by the Landlord on 1<sup>st</sup> December, 2021, and required the Tenant to vacate the premises by 1<sup>st</sup> March, 2022. I note that the duration of the notice was as prescribed by the Act thus complied with the law in that regard.
20. 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.
21. It is evident that the notice of termination of the tenancy herein was in Form A as prescribed by the Act.
22. 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:

Whether the Landlord has met the requirements of Section 7 (1) (f) of the Act?

22. Article 40 of *the Constitution* of Kenya 2010 guarantees the right of every person either individually or in association with others, to acquire and own property. This includes the right of a proprietor of land to enjoy and benefit from the use of such property and to deal with the property as they please within the confines of the Law.



23. Accordingly, Section 7 of the Act clearly stipulates the grounds upon which a Landlord may seek to terminate tenancy. One of the grounds as enshrined in Section 7 (f) of the Act is: -

7(f) 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.

24. The above provision affirms the right of the Landlord to undertake renovations and/or repairs to their property. According to the termination notice served upon the Tenant, the Landlord sought to terminate the tenancy on the ground “that landlord intends to demolish and or reconstruct the premises thus carry out substantial work...”
25. In support of this intention, the Landlord tabled this as an agenda in its meetings as evidenced by the minutes filed before the Tribunal . The Tribunal shall not delve into the validity of the said meetings as invited by the tenants as the same do not fall within the purview of the Tribunal.
26. In expounding on the threshold that should be met by a Landlord placing reliance on Section 7(1)(f) of the Act as a ground for termination of tenancy, the High Court in the case of; *Auto Engineering Ltd Versus M. Gonella & Co. Ltd* (1978) eKLR stated as follows: -

“...First, it is correct that the wording of section 7(1)(f) is “demolish or reconstruct”, and not merely to effect repairs. The distinction can of course be important; for while mere repairs may not necessarily mean that the landlord needs possession of the premises, an intended demolition or reconstruction of a substantial part of the premises would in all probability be frustrated if the landlord could not obtain possession, and that is why this provision exists.”

27. The Court went ahead to state as follows:

“For this purpose the Court must be satisfied that the intention to reconstruct is genuine and not colourable: that it is a firm and settled intention, not likely to be changed: that the reconstruction is of a substantial part of the premises, indeed so substantial that it cannot be thought to be a device to get possession; that the work is so extensive that it is necessary to get possession of the holding in order to do it; and that it is intended to do the work at once and not after a time. Unless the Court were to insist strictly on these requirements, tenants might be deprived of the protection which Parliament intended them to have. It must be remembered that, if the landlord, having got possession, honestly changes his mind and does not do any work of reconstruction, the tenant has no remedy. Hence the necessity for a firm and settled intention. It must also be remembered that the Act is intended for the protection of shopkeepers, and that this protection would be nullified if a big concern could buy the property and get possession by putting in, say a new shop-front. Hence the necessity for the work being substantial.”

28. In this present case, the notices from the county government almost convey near conflicting messages but both allude to the premises being old. The same therefore informed the need by the landlord to reconstruct the premises which is within their right. It is my finding that the repairs and or renovation intended to be undertaken by the Landlord are substantial within the meaning of Section 7(1) (f) of the Act.
29. On this basis therefore, I find that the Landlord has convinced this Honourable Court that the renovations to be conducted in the suit premises are substantial or extensive in nature to warrant



vacant possession of the suit premises. The Landlord has met the threshold of terminating a tenancy in accordance with Section 7 (1)(f) of the Act.

30. I have taken cognizance of the nature of relationship between the parties and would decline to award costs to the successful party. I am also aware of the prolonged period of the tenancy relationship thus it is only prudent that the parties disengage with minimal acrimony.
31. In the end the following orders commend itself:
- a. The landlord's notice to terminate tenancy dated 1<sup>st</sup> December, 2021 is upheld.
  - b. The references dated 26/2/2022 are dismissed.
  - c. The tenants shall vacate the demised premises by 1<sup>st</sup> December, 2023 and shall clear any outstanding rent arrears before then. The OCS of the nearest police station to ensure compliance.
  - d. Each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 10<sup>TH</sup> NOVEMBER, 2023**

**HON. PATRICIA MAY**

**MEMBER**

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the absence of the parties.

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