



**Kiptoo t/a Wema Junction Supermarket v Baiya t/a Kosoginin Investment (Tribunal Case E112 of 2022) [2023] KEBPRT 362 (KLR) (Commercial & Admiralty) (22 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 362 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
COMMERCIAL AND ADMIRALTY  
TRIBUNAL CASE E112 OF 2022  
A MUMA, VICE CHAIR  
MAY 22, 2023**

**BETWEEN**

**ANDREW KANDIE KIPTOO T/A WEMA JUNCTION  
SUPERMARKET ..... TENANT**

**AND**

**MARKO SUTER BAIYA T/A KOSOGININ INVESTMENT ..... LANDLORD**

**RULING**

**A. Parties And Their Representatives**

1. The Applicant is a sole proprietor trading as Wema Junction Supermarket who rented the premises known as Uasingishu/Kimumu/2553.
2. The Respondent is a sole proprietor trading as Kosoginin Investment and the owner of the suit premises.
3. The Firm of J.K Kapitch & Associates represents the Tenant in this matter.
4. The Firm of A.K Chepkonga & Co. represents the Landlord in this matter.

**B. Background Of The Dispute**

5. The Tenant filed a reference and a Notice of motion both dated November 24, 2022.
6. The application sought orders to compel the landlord to restore electricity supply and prohibit the Landlord and his servants or employees from unlawfully tampering with electricity and water supply and interfering with the Tenant's quiet possession.



7. Subsequently, the Tenant filed an amended Notice of Motion Application dated November 29, 2022 seeking the same orders, in addition to an order compelling the Landlord to open the business premises.
8. On December 1, 2022, this Honorable Tribunal issued orders compelling the Landlord to open the business premises, restore electricity and water supply to the suit premises and prohibiting him from unlawfully evicting and tampering with the supply of water and electricity pending the hearing and determination of the reference and application inter partes on January 10, 2023.
9. In response to the Tenant's application, the Landlord filed a notice of motion application and a replying affidavit both dated February 7, 2022.
10. The Tenant filed his submissions and a further Replying Affidavit both dated March 6, 2023 and the Landlord filed his submissions on the even date.

### **C. Claim And Defence**

11. The tenant claims that the Landlord issued him with illegal notices with malicious intent of evicting him from the premises in disguise of intending to cause repairs.
12. Additionally, the Tenant claims that the Landlord has continually interfered with his quiet possession and the operations of the business by interfering with the electricity and water supply as well locking the suit premises.
13. The Landlord contends that he issued illegal notices. He claims that vide two letters dated June 15, 2022 and October 18, 2022, he informed all the tenants of his intention to renovate the suit premises and further requested them to avail vacant possession for the said premises.
14. Further, the Landlord claims that November 1, 2022, the Tenant through his Counsel informed him that that he was not willing to comply with the request to renovate.
15. Consequently, the Landlord issued a notice to terminate the tenancy dated August 15, 2022 and served the same to the Tenant. The Tenant neither replied to the said notice of termination within the prescribed timelines, nor filed a reference to the Tribunal regarding the same.

### **D. Issues For Determination**

16. Upon perusal of the documents on record, the following issues fall for determination are;
  - a. Whether the termination notice given on August 15, 2022 is valid.

### **E. Analysis And The Law**

#### **Whether the termination notice given on 15<sup>th</sup> August is valid**

17. Pursuant to section 4(2) of the *Landlord (Shops, Hotels and Catering Establishments)*, a notice of not less than two months must be issued by any party intending to terminate or alter the terms of a tenancy.
18. It is evident from the documents filed by Landlord that he complied with section 4(2) of the Act. He issued the Tenant with a notice to terminate the tenancy dated August 15, 2022 with effect from October 15, 2022.
19. Further, the notice indicated the reason for termination as the need to renovate the premise which is currently in a dilapidated condition, pursuant to section 7(f) of the *Landlord and Tenant (Shops,*



*Hotels and Catering Establishments*) which provides for it as a ground upon which a Landlord may terminate the tenancy. It provides;

“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;”

20. However, it is not enough to merely state that the reason for termination is the intention to demolish, reconstruct or carry out substantial renovation. The Court pronounced itself on this position in the case of *Fisher v Taylors Furnishing Stores Ltd* [1956] 2 All ER 78, that;

There must, therefore, be an intention and it must be an intention which in point of time is related to the termination of the current tenancy. It seems to me that the intention must be to do one of the following things: (i) to demolish the premises comprised in the holding; or (ii) to reconstruct the premises comprised in the holding; or (iii) to demolish a substantial part of the premises comprised in the holding; or (iv) to reconstruct a substantial part of the premises comprised in the holding; or (v) to carry out substantial work of construction on the holding; or (vi) to carry out substantial work of construction on a part of the holding.

If the landlord proves an intention to do one of those things, and to do it on the termination of the current tenancy, he must then prove that he could not reasonably do it without obtaining possession of the holding.

21. In an attempt to prove the dilapidated condition of the suit premises, the Landlord has placed before this court pictures. However, that said pictures do not establish the intention to renovate the said premises necessitating the notice to terminate tenancy between the parties herein. Additionally, the Landlord has failed to provide proof of funds to facilitate the said renovations.

#### **E. Orders**

22. The upshot is that the Reference dated November 24, 2022 and the Amended Notice of motion Application dated November 29, 2022 are hereby allowed in the following terms;
- The Tenant continues to stay in and pay rent on the due date as agreed.
  - The Landlord has liberty to issue notice when they have required documents for renovation, plans and funds.
  - Each party to bear their own costs.

**HON. A. MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED BY HON. MUMA THIS 22<sup>ND</sup> DAY OF MAY 2023  
IN THE ABSENCE OF THE LANDLORD AND IN THE PRESENCE OF KORIR FOR THE  
TENANT.**

**HON. A MUMA**

**VICE CHAIR**

**BUSINESS PREMISES RENT TRIBUNAL**

