



**Muchina t/a Tavern Liquor v Komrades Investment Limited (Tribunal Case E092 of 2024) [2024] KEBPRT 1540 (KLR) (18 October 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1540 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E092 OF 2024  
P MAY, MEMBER  
OCTOBER 18, 2024**

**BETWEEN**

**ISAAC MUCHINA T/A TAVERN LIQUOR ..... TENANT**

**AND**

**KOMRADES INVESTMENT LIMITED ..... LANDLORD**

**JUDGMENT**

1. The landlord issued the tenant with a notice to terminate tenancy dated 15<sup>th</sup> November, 2023 in accordance with the provisions of section 4(2) of CAP 301. The grounds listed in the notice were that the tenant had violated the terms of the lease by allowing the sale and consumption of alcohol within the premises. The notice was to take effect on 1<sup>st</sup> February, 2024. The tenant was aggrieved by the said notice hence proceeded to file reference dated 26<sup>th</sup> January, 2024. There were interlocutory applications filed in the matter which had to be determined before the reference could be heard. The hearing of the reference proceeded on diverse dates 21/5/2024 and 26/8/2024 whereby each party called witnesses who testified in support of their respective positions.
2. Upon the close of the hearing, the parties elected to file written submissions. I have considered the evidence on record and the submissions filed and would proceed as follows:

**Summary of the Tenant's Case**

3. The tenant in his evidence confirmed that he was in occupation of the demised premises. It was his testimony that he had not been provided with any lease document. He confirmed that he received a notice for termination of tenancy. His advocate responded to the notice by seeking clarification through the letter dated 18/1/2024. He stated that the landlord replied to the letter through a letter with enclosures in the form of photos. According to the tenant, the photos do not show anyone consuming alcohol and that the same was not accompanied with a certificate.



4. The tenant also confirmed that he had taken out a license hence was allowed to engage in trade. On cross examination, the tenant acknowledged that he had previously filed another reference against the landlord being BPRT E1013/2023 which had been concluded. When he was shown the photos by the landlord's advocate, he stated that the individuals appearing were not at his shop but standing in a different shop. He maintained this position on reexamination.

### **Summary of the Landlord's Case.**

5. The landlord called two witnesses being the caretaker and the security guard. The first witness confirmed that the tenant had been in occupation of the demised premises since 2020. He stated that the tenant was to sell wines and spirits on take away basis. He stated that he defied the terms of the tenancy by allowing the consumers to take alcohol on the premises. He stated that they had tried dialogue but the tenant had not been willing to abide by the rules hence affecting the other tenants.
6. The second witness stated that he was posted as a guard at the premises in August, 2023. He confirmed that he took the photos showing the customers taking liquor and that he was the sole guard on the premises. He also confirmed that there was no other premise selling liquor within the building except the tenant's business.

### **Analysis**

7. The sole issue for determination in the present dispute is the validity of the notice to terminate tenancy dated 15<sup>th</sup> November, 2023.
8. The *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya Act at section 4(2) 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.

9. Section 4(4) further 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, as shall be specified therein

10. In the case of; Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited, Civil Appeal No. 203 of 1994 it was 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 ground upon 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.”

11. In this case the Landlord issued the Tenant with a notice to terminate tenancy on 15<sup>th</sup> November 2023 which was to take effect from 1<sup>st</sup> February 2024. Based on the above provision, the said notice was to



take effect after two months which is as per the provisions of Cap 301. As such the said notice can be deemed to be valid.

12. The Tribunal will now assess the grounds set out in the notice. Section 7 of Cap 301 provides for the grounds on which the landlord may terminate tenancy. Section 1 (c) provides as follows:

“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.”

13. In the present dispute the landlord has accused the tenant for the sale of alcohol within the premises. This the landlord stated that it did not only breach the licensing terms but also caused an inconvenience to the other tenants. The tenant had become a nuisance. The landlord’s witnesses confirmed as such during the hearing.
14. 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.
15. It is evident from the evidence tendered through the affidavits that the landlord and tenancy relationship has been severed. The Tribunal has a duty to balance the commercial interests at stake and ensure that none of the parties is placed at a disadvantaged position. The Tribunal has to considered that in protecting the rights of one party, the other do not suffer loss. In the present circumstances, if the tenant’s continued occupation will cause the other tenants to vacate, then the landlord will be prejudiced.
16. In view of the findings above, the following orders commend itself:
- a. The notice of termination dated 15<sup>th</sup> November, 2023 is upheld. The tenant is however allowed to be in occupation of the demised premises until 1<sup>st</sup> December, 2024.
  - b. The tenant shall pay any outstanding rent and the rent up to 1<sup>st</sup> December, 2024.
  - c. Each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18<sup>TH</sup> DAY OF OCTOBER, 2024.**

**HON. PATRICIA MAY - MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the absence of the parties

