



**Nyagah v Yawa (Tribunal Case E002 of 2024) [2024] KEBPRT 799 (KLR) (27 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 799 (KLR)

**REPUBLIC OF KENYA**  
**IN THE BUSINESS PREMISES RENT TRIBUNAL**  
**TRIBUNAL CASE E002 OF 2024**  
**CN MUGAMBI, CHAIR**  
**MAY 27, 2024**

**BETWEEN**

**KIMANTHI NYAGAH ..... APPLICANT**

**AND**

**MAKUPE YAWA ..... RESPONDENT**

**RULING**

1. The Landlord's notice to terminate tenancy dated 4.12.2023 is brought on the grounds;-  
"That the Landlord intends to use the subject premises for a period more than one year."
2. The Tenant in opposing the Landlord's notice to terminate tenancy filed a Reference to the Tribunal under Section 6(1) of Cap 301 dated 4.1.2024.

**The Landlord's Case**

3. When this matter came up for hearing on 17.4.2024, the Landlord testified;
  - a. That the Tenant has not been paying the rent that the Tribunal determined.
  - b. That he would like to repair the building and put it to his own use.
  - c. That he issued the Tenant with a notice to terminate tenancy dated 4.12.2023 and the grounds upon which the termination is sought are well set out in the said notice.  
UPON CROSS EXAMINATION by Counsel for the Tenant, the Landlord stated
  - d. That the Tenant has not paid the rent the court ordered in BPRT Case No. E078 of 2021 (Mombasa) at the rate of Kshs. 30,000/= per year.
  - e. That the landlord is not aware of any appeal against the Ruling of the Tribunal.



- f. That the Tenant has wanted to renovate the suit premises for a long time and the Tenant has to move out to enable the landlord to renovate the premises.
- g. That the Tenant has been in the premises for over ten (10) years and has had problems paying rent.

### **The Tenant's Case**

4. The evidence of the Tenant may be summarized as follows;-
  - a. That he was the Tenant of the deceased YAWA MAKUPE and his son is his current landlord.
  - b. That the Tenant filed a Reference to the Tribunal BPRT Case NO. E078 of 2021 where the Tribunal ordered the Tenant to pay the monthly rent of Kshs. 30,000/= and against which Ruling the Tenant has appealed.
  - c. That the Tenant does not owe the Landlord any rent and he is still operating in the premises.  
UPON CROSS EXAMINATION by the Landlord, the Tenant stated as follows;
  - d. That although the Tribunal ordered him to pay Kshs. 30,000/= per month, the Tenant has been paying Kshs. 5,000/= as he awaits for the outcome of the Appeal.
  - e. That he does not owe the landlord any rent.

### **Analysis and determination**

5. The only issue that arises for determination in this suit is whether the landlord has established by way of evidence the grounds for the termination of tenancy set out in his notice to terminate tenancy dated 4.12.2024.
6. The ground upon which the Tenant seeks to terminate tenancy is that he intends to use the subject premises for a period of more than one year. In his evidence, the Landlord told the Tribunal that he would like to repair the building and put it to his own use. Under cross examination, the Landlord stated that he has been desirous of renovating the premises for a long time and the Tenant has to move out to enable the Landlord to renovate the premises.
7. The Landlord has not shown to the court the nature of the renovations that he wants to carry out in the premises. he has further not led any evidence of the nature of the business he wants to carry out in the suit premises.  
  
While the Landlord states that he is desirous of renovating the premises, I find his evidence scanty and falls short of establishing a firm intention to renovate the premises.
8. From the evidence led by the Landlord, it is obvious that the Landlord is not clear on the grounds upon which he intends to terminate the tenancy. The Landlord seemed to pin his case more on the non-payment of the rent ordered to be paid by the Tenant in case No. BPRT E078 of 2021. The orders in the said case for the payment at Kshs. 30,000/= per month do not form part of the grounds upon which the Landlord seeks to terminate the tenancy as the notice under discussion speaks for itself. Suffice it to say that the Tenant is at liberty to pursue the execution of the orders issued in Case No. BPRT E078 of 2021 if he so desires.
9. In the circumstances, I do not find any merits in the Landlord's notice to terminate tenancy dated 4.12.2023 and I do order in terms of the provisions of Section 9(1)(b) of Cap 301 that the said notice shall be of no effect.



10. The Reference by the Tenant is allowed.

11. The Landlord shall bear the costs of the Reference.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27<sup>TH</sup> DAY OF MAY, 2024

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**BUSINESS PREMISES RENT TRIBUNAL**

Delivered in the presence of Mr. Makupe Yawa – landlord and in the absence of the Tenant

BPRT CASE NO. E002 OF 2024 (MOMBASA) 3

