



REPUBLIC OF KENYA



**Njeri v Rimita (Tribunal Case E029 of 2023)
[2023] KEBPRT 1339 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1339 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E029 OF 2023
P MAY, MEMBER
OCTOBER 19, 2023**

BETWEEN

PAULINE NJERI TENANT

AND

GRACE KANANU RIMITA LANDLADY

RULING

1. The application before me is the tenant's notice of motion dated 12th June, 2023 which was filed contemporaneously with the reference dated on an even date. The gist of the application is that the landlady served the tenant with the notice to terminate tenancy dated 17th May, 2023 and thus the tenant was seeking the protection of the Tribunal against the landlady effecting the notice which was to take effect on 18th July, 2023. The tenant sought amongst other orders, an order of temporary injunction against the landlady. The application was placed before the Tribunal on 19th June, 2023 whereby the tenant was granted interim orders of temporary injunction pending inter partes hearing.
2. The landlady upon being served with the application duly entered appearance and filed their response in opposition to the application vide the Replying affidavit sworn on 31st August, 2023. The landlady maintained that the application was misconceived and only meant to frustrate her from reaping from her investment. It was the landlady's contention that the allegations of her frustrating the tenant were unfounded and false as the tenant was still in occupation of the demised premises. The landlady urged the Tribunal to uphold the principle that litigation must come to an end and save her from a vicious tenant who kept filing multiple applications on every notice she served.
3. The parties were directed to canvass the application by way of written submissions. I have considered the affidavits and the attendant annexures and wish to proceed as follows:
4. The present dispute revolves around the validity of the landlady's Notice of Termination of Tenancy dated 17th May 2023. The Tribunal is required to determine the validity of the same.



5. It is not in dispute that the landlady issued the Tenant with a Notice of termination of the tenancy dated 17th May, 2023, pursuant to section 4(2) of the of the *Landlord and Tenant (shops, Hotels and Catering Establishment) Act*.
6. The position of the law on the issue of a termination notice is now settled. The Court in *Manaver N. Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited*, Civil Appeal No 203 of 1994, stated that: -

“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.”
7. It is evident that the notice of termination of the tenancy herein was in Form A as prescribed by the Act. Further, the notice of termination of the tenancy was to take effect on 18th July, 2023, being a period exceeding two months as required by the Act.
8. 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. The landlady in her grounds of termination stated that the tenant had become a nuisance not only to her but also to the tenants. She has maintained the said grounds in her replying affidavit and went even a mile further in their submissions by quoting the Holy Book from the book of Hebrews.
9. 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.
10. It is evident from the evidence tendered through the affidavits that the landlord and tenancy relationship has been severed. It would seem that the tenant has taken advantage of the favourable decisions and directions obtained from the Honourable to trample on the landlady and the other tenants. 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.
11. In view of the findings above, the following orders commend itself:
 - a. The notice of termination dated 17th May, 2023 is upheld. The tenant is however allowed to be in occupation of the demised premises until 1st November, 2023.
 - b. The tenant shall pay the agreed rent as when it falls due and restore the premises back to their original state before vacating as ordered by the Tribunal.
 - c. This ruling settles the reference filed in the present matter and in Meru E015 OF 2023.
 - d. Each party shall bear their own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19TH DAY OF OCTOBER 2023.



HON. P. MAY - MEMBER

19.10.2023

In the presence of the Tenant- Pauline Njeri

In the absence of the landlord

