



**Chetechi v Lilian (Tribunal Case E107 of 2023)
[2024] KEBPRT 657 (KLR) (26 April 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 657 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E107 OF 2023
N WAHOME, MEMBER
APRIL 26, 2024**

BETWEEN

KASSIM CHETECHI APPLICANT

AND

MUSOTSI LILIAN RESPONDENT

JUDGMENT

1. These proceedings were originated through the reference dated 24th November 2023. The same was founded on Section 12(4) of the Landlord and Tenant (Shops, Hotel and Catering establishments Act) Cap. 301 herein after “the Act”. The landlord complained that:-

“The Tenant has not filed any reference to oppose the termination notice served on her dated 23rd May 2023 and has expired. I request the rent Tribunal court and OCS Mumias Police Station to order the Tenant to pay rent arrears and vacate the business premises”.
2. The reference was triggered by the non- responsiveness of the Respondent to the notice of termination of tenancy dated 23/5/2023 as aforesaid. The same was to take effect on the 1st August 2023. After the expiry of the Notice on the 1st August 2023, the landlord wrote a letter dated 24th November 2023 requesting this Tribunal to confirm whether any reference had been filed in response to his said notice of termination of tenancy dated 23rd May 2023.
3. This Tribunal responded to his said letter by its letter dated 24th November 2023 to the effect that:-

“The Tenant Lilian Onyolo Musotsi has not filed any reference in this his office to oppose the above mentioned landlord’s notice issued and served upon her by his landlord dated 26th January 2023”.



4. Thereafter this file was consolidated with file no. E182/2023 with this file no. E107/2023 being the lead file. The matter was subsequently fixed for hearing on the 7th March 2023 but was heard on the 26/2/2023 as the court was sitting in the physical court at Kakamega.
5. The Applicant testified alone and closed his case. His evidence was that:-
 - i. The Respondent was his Tenant as the administrator of the estate of his late father.
 - ii. She initially possessed one (1) room but later added another two (2) and from then started having difficulties in paying rent.
 - iii. At the time she was testifying in court, she had rent arrears of Kshs.91,000/-.
 - iv. On cross-examination he denied that the Tenant owed Kshs.79,000/-.
 - v. The Tenant had not opposed the Termination notice and the same had taken effect on the 1st August 2023.
 - vi. Complained that instead of paying the rent, the Tenant decided to renovate the premises and re-stock her supermarket.
 - vii. He took care of the widows left by his late father and also educated the children thereof from rent paid on the premises and the family was suffering.
6. The Tenant also testified and did not call any witness before closing her case. Her evidence is that:-
 - i. She owed Kshs.79,000/- to the Applicant and which she was willing to liquidate by end of April, 2024.
 - ii. By the same date of 30th April, 2024 she would be upto date on the current rents as they accrue and fall due.
 - iii. She had been a good tenant for the last five years until she fell into financial challenges.
7. Though the respondent did not file any pleadings, she was allowed to give her defence in drive to do substantial justice to the parties under Article 159(2) (d) of *the Constitution*.
8. Having taken due regard to all the materials placed before me and to the oral evidence rendered by both parties, I am of the view that the issues for determination in this matter are the following:-
 - A. Whether the notice of termination of tenancy dated 23rd May 2023 is lawful.
 - B. How much Rent is owed to the landlord in rent arrears if at all.
 - C. Who should bear the costs of this reference.
 - A. Whether the notice of termination of tenancy dated 23/5/2023 is lawful.
9. The Respondent never challenged the notice of termination dated 23/5/2023 in anyway at all. She never disagreed with the notice and further never filed any reference in objection to the same as required under Section 6(1) of the Act. The same provides that:

“A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under Section 4(5) of this Act that he does not agree to comply with the tenancy notice, may before the date upon which such notice is to take effect, refer the matter



to a tribunal, whereup such notice shall be of no effect until and subject to the determination of the reference by the Tribunal”.

10. From the record, it is evident that the Tenant never lodged a reference in objection to the notice as was also confirmed by this Tribunal by its letter dated 24th November 2023. In court, the Tenant never raised any objection to the notice even after having been afforded an opportunity to offer her defence despite not having any pleadings on record.
11. It is my finding therefore that the notice of termination dated 23/5/2023 took effect on the 1st august 2023 and the relationship between the parties as then recognized under Section 2(1) of the Act was ended. In this, I make reference to section 10 of the Act which provides that:-

“Where a landlord has served a notice in accordance with the requirements of Section 4 of this act, on a tenant, and the tenant fails within the appropriate time to notify the landlord of his unwillingness to comply with such notice, or to refer the matter to a tribunal then subject to Section 6 of this Act, such notice shall have effect from the date therein specified to terminate the tenancy, or terminate or alter the terms and conditions, thereof or the rights or services enjoyed thereunder”.

B. How much rent is owed in arrears to the landlord if at all

12. The landlord Mr. Kassim Chitechi Ali claimed that the rent arrears at the time of his testimony in court on the 27/2/2024 was Kshs.91,000/-. On the other hand the Tenant Lilian Onyoro Musotsi asserted that it was Kshs.79,000/- only. There was however no material evidence offered to support any of the two positions.
13. Though I have no reason whatsoever to doubt the landlord who appeared claim and truthful, I would in view of Section 107 (1) of the [Evidence Act](#) settle on the amount of Kshs.79,000/- admitted by the Tenant as the rent arrears as at the month of February, 2024. The Section provides that:-

“Whoever desires any court to give judgement as to any legal right or liability dependent on existence of facts which he asserts must prove that this facts exist”.

14. The proviso to Section 27 of the [Civil Procedure act](#) provides that:-

“Provided that the costs of any auction, cause or any other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order”.

15. I would therefore grant the costs of the suit to the Applicant/Landlord.
16. In conclusion, the orders that commend to me are the following:-
 - i. That the Applicant shall pay rent in arrears and mesne profits at Kshs.79,000/- as at February, 2024 and other arrears that may have fallen due within 30 days hereof and in default, recovery proceedings to issue.
 - ii. That the notice of termination of tenancy dated 23/5/2023 took effect on the 1/8/2023 and the Tenant/Respondent is required to deliver vacant possession of the demised premises immediately and in any event within the next 30 days of this judgement. In default she be evicted with the assistance of the OCS Mumias Police Station.
 - iii. That the landlord is awarded the costs of this suit assessed at Kshs.20,000/-.

Those are the orders of the court.



JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF APRIL, 2024.

HON. NDEGWA WAHOME

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Judgement delivered in the absence of the parties. The court to notify the parties accordingly.

HON. NDEGWA WAHOME

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

26TH APRIL, 2024

