



Mwiti v Juma (Tribunal Case E039 of 2024) [2024] KEBPRT 1144 (KLR) (9 July 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1144 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E039 OF 2024
M MAKORI, MEMBER**

JULY 9, 2024

BETWEEN

STANLEY MWITI TENANT

AND

SHUMI JUMA LANDLORD

RULING

1. This Ruling is in respect to a Notice of Motion Application dated 24/01/2024 by the Tenant/Applicant and opposed vide a Replying Affidavit dated 15/03/2024 and deponed by Shumi Juma.
2. The parties were directed on the filing of submissions on even dates and this court have had a sight of the Tenant/Applicant's submissions dated 10/03/2024 and Landlord/Respondent's Submissions dated 15/03/2024 as at the time of preparing this Ruling.
3. From the totality of the pleadings and submission filed by parties one issue poses itself for determination and that is whether the Termination Notices Dated 08/12/2023 is a proper and whether the Notice of Motion Application dated 25/01/2024 are merited?
4. To address this issue I would like to focus on the provisions of Shops, Hotels and Catering Establishments) Act on termination of a tenancy. Section 7 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) establishes the grounds upon which a landlord can terminate a tenancy as follows;
 1. Where under section 4 of this Act served a notice of termination of a controlled tenancy on the tenant, the grounds on which the landlord seeks to terminate such tenancy may be such of the following grounds as are stated in the aforesaid notice—
 - a. where, under the tenancy under which the tenant holds for the time being, the tenant has any obligations in respect of the repair and maintenance of the premises comprised in such tenancy, that the tenancy ought to be terminated in view of the state of repair



of the premises, being a state resulting from the tenant's failure to comply with the said obligations;

- b. that the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable;
- c. 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;
- d. that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his retail trade or business or enterprise and to the situation and extent of, and facilities afforded by, the premises comprised in the tenancy;
- e. that the tenancy was created by the subletting of part only of the premises comprised in a superior tenancy of which the landlord is the owner of interest in reversion expectant on the termination of that superior tenancy, and that the aggregate of the rents reasonably obtainable on separate lettings of such premises in parts would be substantially less than the rent reasonably obtainable on a letting of such premises as a whole, and that on the termination of the tenancy the landlord requires possession of such premises as a whole for the purpose of letting or otherwise disposing of the same as a whole;
- f. 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;
- g. Subject as hereinafter provided, that on the termination of the tenancy the landlord himself intends to occupy for a period of not less than one year the premises comprised in the tenancy for the purposes, or partly for the purposes, of a business to be carried on by him therein, or at his residence.

5. In *Oscar Luvaha (Explore Auto Valuers and Assessories Limited) v Babi Investments & another* [2021] eKLR where the court in citing the Court of Appeal decision noted that; -

“The two requirements therefore for a valid notice of termination of the tenancy is first, that the notice shall be in the prescribed form and secondly, that the notice shall not take effect until after expiry of two months, or such notice period as may be agreed by the parties. This was emphasized in the case of *Munaver N Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited* [1995] eKLR, where the Court of Appeal at Mombasa in finding that the notice of termination of the tenancy was void for failing to comply with Section 4 of the Act 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 grounds on 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.”

6. The Respondent/Landlord through their pleadings admitted the claim that they issued a notice dated 08/12/2023 and to take effect on 08/02/2024 vide a letter drafted by the firm of M/S.S. OSMAN & COMPANY ADVOCATES.
7. The position of the law on the issue of a termination notice as discussed in Manaver N. Alibhai T/ A Diani Boutique vs. 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.
8. It is evident that the Notice Dated 08/12/2023 was not in Form A as prescribed by the Act and as thus not enforceable in the strict adherence to the provisions of [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#)
9. From above cited provision of the law and authority, it is without a doubt that the Notice to Terminate issued on the 08/12/2023 is not as contemplated under the act and appropriate case laws as highlighted above.
10. Having established that the notice of termination of the tenancy was not properly drafted I shall proceed to analyze the substance of the notice with regard to the grounds of termination of the tenancy as follow

Analysis And Determination

11. Accordingly, Section 7 of the Act clearly stipulates the grounds upon which a Landlord may seek to terminate tenancy. One of the grounds as enshrined in Section 7 (f) of the Act is: -
 - 7(f) 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.



12. In expounding on the threshold that should be met by a Landlord placing reliance on Section 7(1)(f) of the Act as a ground for termination of tenancy, the High Court in the case of *Auto Engineering Ltd Versus M. Gonella & Co. Ltd* (1978) eKLR stated as follows: -

“...First, it is correct that the wording of section 7(1)(f) is “demolish or reconstruct”, and not merely to effect repairs. The distinction can of course be important; for while mere repairs may not necessarily mean that the landlord needs possession of the premises, an intended demolition or reconstruction of a substantial part of the premises would in all probability be frustrated if the landlord could not obtain possession, and that is why this provision exists.”

13. In order to succeed in a claim of vacant possession against a Tenant/Applicant it is without a doubt that the Honourable Court must be satisfied that the Landlord/Respondent followed the prescribed procedure(s) in due time to notify the tenant to vacate the premises and the grounds upon such termination are relied upon properly explained to the Tenant/Applicant.
14. Though the reasons stated in the letter dated 08/12/2023 are to some extent compelling, I am persuaded that a notice dated 08/12/2023 and expected to take effect 08/02/2024 amounts to an affront to the gains as to the procedure of terminating tenancies as provided for in the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#).

Disposition

15. Based on the foregoing, the Tribunal makes the following orders
- The Notices to Terminate Tenancy vide a letter dated 08/12/2023 and to take effect on 08/02/2024 are null and void for contravening Section 4 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act
 - The Tenant/Applicant shall clear the Outstanding Rent arrears as at the time of this Ruling within 30 days’ failure to which the Landlord/Respondent shall be at liberty to Distress for Rent.
 - That in the Intervening period the Landlords/Respondents their agents and/or people acting under their instructions are restrained from evicting, locking out, foreclosing, terminating or interfering with the Tenant/Applicant peaceful occupation of the demised premises.
 - Each party shall bear their own costs.

HON. MIKE MAKORI

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by Hon Mike Makori this 9th May, 2024

HON. MIKE MAKORI

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

