



**Bidali & another v Guandai t/a Guandai Karugu Holdings Limited (Tribunal
Case E1067 of 2023) [2024] KEBPRT 1146 (KLR) (7 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1146 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1067 OF 2023
M MAKORI, MEMBER
MAY 7, 2024**

BETWEEN

EVANS LIHASI BIDALI & ASA LAVASA BIDALI TENANT

AND

**PHILOMENA GUANDAI T/A GUANDAI KARUGU HOLDINGS
LIMITED LANDLORD**

RULING

Introduction

1. This Ruling is in respect to a Reference and a Notice of Motion Application dated 27/10/2023 by the Tenant/Applicant and which Reference was opposed vide a Replying Affidavit dated 15/11/2023 and deponed by SIMON MUCHIRI
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 05/12/2023 and Landlord/Respondent dated 15/01/2024 as at the time of preparing this Ruling.
3. From the totality of the pleadings and submissions filed by parties two issues commends themselves for hearing namely;
 - a. Whether this is a case of a Controlled tenancy?
 - b. What are the appropriate Order for this Court to issue?



Whether this is a case of a controlled tenancy?

4. On the first issue as to whether this is a controlled tenancy I wish to note that 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.

5. 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

6. 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.”

7. I have no doubt in my mind that indeed the relationship between the Tenant/Applicant and the Landlord/Respondent which has existed for about 40 years is a Controlled Tenancy for all intents and purposes.

What are the appropriate order for this court to issue?

8. In addressing the above underscored issues, the Court wishes to re-state the mandate it has in determining the disputes brought before it pursuant to the provisions of section 12 (1) of the Landlords & Tenants (Shops, Hotel & Catering Establishments Act, Cap 301 Laws of Kenya) that; -

A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power—

- a. to determine whether or not any tenancy is a controlled tenancy;
- b. to determine or vary the rent to be payable in respect of any controlled tenancy, having regard to all the circumstances thereof;
- c. to apportion the payment of rent payable under a controlled tenancy among tenants sharing the occupation of the premises comprised in the controlled tenancy;
- d. ...



9. As to whether the tenant is entitled to the reliefs claimed, I only need to cite the decision in Aikman – vs- Muchoki (1982) eKLR at page 4/6 wherein Madan J.A (as he then was) while considering a similar matter had the following to say: -

“Those who flout the law by infringing the rightful title of others and brazenly admit it ought to be restrained by injunction. If I am adding a new dimension for the grant of an interlocutory, injunction be it so. Equity will not assist lawbreakers..... I will not subscribe to the theory that a wrong doer can keep what he has taken because he can pay for it. The real injury arose from the unlawful seizure of the estates by the defendants in defiance of the law. As in the circumstances, the plaintiffs could not fail to succeed the status quo first had to be restored”

10. In the case of Fredrick Mutua Mulinge t/a Kitui Uniform – vs- Kitui Teachers Housing Co-operative Society Limited (2017) eKLR at page 4/6, the superior court followed the case of Ann Mwaura & 9 others – vs- David Wagatua Gitau & 2 others (2010) eKLR wherein Maraga J (as he then was) stated as follows: -

“As regards the period of notice, I concur with the court of Appeal holding in the said case of Caledonia supermarket ltd – vs- Kenya National Examinations Council (2002) 2 EA 357 that “failure to comply with these mandatory requirements rendered the purported notice (s) null and void and incapable of enforcement”.

11. The court went on to cite the decision in Manaver N. Alibhai t/a Diani Boutique – vs- South Coast Fitness and Sports Centre Limited Civil Appeal no. 203 of 1994 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 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 the 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”

12. This court has noticed that the Notice of Termination or Alteration of terms of a tenancy dated 17th May, 2023 and to take effect on 1st August, 2023 is in subscribed form and as thus valid the only question lingering in the mind of this court is whether the change from the rent of Kshs 40,000/= to Kshs 155,00/= has been justified to this court’s satisfaction.
13. Besides attaching a valuation report by Wainaina Kironyo nothing further has been tabled before the court to aid its appreciation of an increment of monthly rent from kshs 40,000/= to kshs 155,000/=.
14. In the circumstances and in exercise of my discretion pursuant to provisions of section 12 (1) (b) & (c) of the Landlords & Tenants (Shops, Hotel & Catering Establishments Act, Cap 301 Laws of Kenya) I order as follows;
- a. That the Tenant/Applicant Reference dated 27/10/2023 be fixed for hearing in the next 45 days.



- b. Each Party is to file a Current Valuation Report for the demised premises within 21 days of today.
- c. In the Interim and/or in the intervening period the Landlord/Respondent their agents and/or people acting under their instructions are restrained from evicting, locking out, foreclosing, terminating, or interfering with the Tenant/Applicant's peaceful occupation of the demised premises subject to the paying of Rent as per terms prior to Rent Review Notice dated 17/05/2023.
- d. Costs to be in the cause.

HON. MIKE MAKORI

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by Hon Mike Makori this 7th May, 2024 in the presence of Mr. Wambilianga for the Tenant/Applicant and Ms. Mwikali for the Landlord/Respondent.

HON. MIKE MAKORI

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

