



**Mbaabu v Akui (Tribunal Case E056 of 2023)
[2024] KEBPRT 1134 (KLR) (10 July 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1134 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E056 OF 2023
P KITUR, MEMBER
JULY 10, 2024**

BETWEEN

MURIIRA MBAABU TENANT

AND

JANET AKUI LANDLORD

JUDGMENT

A. Parties and their Representatives

1. The Landlord herein has been sued in that capacity by the Tenant who alleges she is the owner and Landlady of property near Ngundune Market within Meru County (hereinafter referred to as “the premises”) a shop on which was let out part to the Tenant.
2. The Landlord is represented by the firm of Mithega & Kariuki Advocates.
3. The Applicant is a Tenant of the Landlord and occupies the premises.
4. The Tenant appears in person.

B. Dispute Background

5. The Tenant states that he has been occupying the Landlord’s property as a Tenant since October 2022 at a monthly rent of Kshs. 6,000/=. The Tenant acknowledges that he defaulted in rent payment due to financial challenges and on 13th October 2023, the Landlord closed the premises.
6. It is the Tenant’s case that on 4th December 2023, upon an agreement with the Landlady, he paid the arrears of Kshs. 30,000/= on condition that the premises would be reopened for him to continue operating his business. According to the Tenant, the Landlord did not allow him back to the premises as a Tenant but only required him to collect his goods and vacate the premises. It is for that reason that



he approached the Tribunal seeking among others, an order restraining the Landlord from evicting him and an order to have the premises reopened.

7. On her part, the Landlady denies knowing the Tenant, let alone there existing a Landlord-Tenant relationship between them at the property near Ngundune Market or anywhere else.
8. With the explicit denial of the existence of a Landlord- Tenant relationship by the Landlord, the Tribunal saw the need of a site visit which was conducted on 22nd May 2024 to establish the state of the premises and whether there exists a Landlord- Tenant relationship. The Report findings will be considered in making this determination.

C. Issues for Determination

9. I have considered the Tenant's application and the reply thereto and it is my considered view that the main issue that is before this Honorable Tribunal is:
 - i. Whether the Tenant is entitled to the prayers sought

D. Analysis and Determination

10. From the evidence by the parties and the report rendered upon the inspection on 22nd May 2024, it is clear that there exists a Tenancy relationship between the parties herein. The Tenancy was not reduced to writing and thus the relationship between them falls within the definition of a controlled tenancy under Section 2 of the [Landlord and Tenants \(Hotels, Shops and Catering Establishments\) Act](#) Cap 301 ("the Act") which provides:

"controlled tenancy" means a tenancy of a shop, hotel or catering establishment—

- a. which has not been reduced into writing; or
- (b) which has been reduced into writing and which—
 - (i) is for a period not exceeding five years; or
 - (ii) contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
 - (iii) relates to premises of a class specified under subsection (2) of this section:

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;

11. The [Act](#) requires a Landlord who wishes to terminate or alter the terms of a controlled tenancy to issue a notice in the prescribed form. Section 4(2) of the [Act](#) provides as follows;
 4. Termination of, and alteration of terms and conditions in, controlled tenancy
 - (2) 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.



12. In Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited, Civil Appeal No. 203 of 1994 the Court of Appeal held 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.

13. Additionally, in Nandlal Jivraj Shah & 2 others (all trading as Jivaco Agencies v Kingfisher Properties Limited [2015] eKLR the Court of Appeal pronounced itself as follows;

“The procedure of terminating a controlled tenancy is contained in the Act. Under Section 4(1) thereof, termination of controlled tenancies can only be undertaken under the purview of the Act as follows: -

4

- (1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall 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 the following provisions of this Act.
- (2) 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....” (Emphasis added)

14. In the present matter before this Honourable Tribunal, it is clear that the Landlord did not issue any Notice to Terminate Tenancy as provided under the schedule to the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966.
15. The provisions of the Act with respect to issuing a notice are couched in mandatory terms, without compliance of which no proper termination or alteration of terms of Tenancy can be said to occur.
16. Additionally, the Landlord’s act in closing the premises is not only harsh and severe but does not enjoy the protection of Law.
17. In light of the foregoing, I therefore proceed to order as follows;

E. Orders

18. The upshot is the Tenant’s Application dated 8th December 2023 succeed in the following terms:
- a. The Landlord shall immediately reopen the Tenant’s business premises at the property near Ngundune Market within Meru County no later than 11th July 2024 at 10 am failing which the Tenant shall be at liberty to break in enter and retake occupation of the premises with the assistance of OCS Ngundune Police Station.



- b. The Landlord is hereby restrained from evicting the Tenant or in any manner howsoever unlawfully interfering with the Tenant's quiet occupation, possession and lawful enjoyment of the suit premises at the property near Ngundune Market within Meru County.
- c. The Tenant shall resume rent payment upon reopening and taking over possession at the monthly rate Kshs. 6,000/= as from the month of August 2024 and shall thereafter continue paying rent as and when it falls due.
- d. The Landlord is at liberty to issue any notice in the prescribed form no earlier than 31st December 2024.
- e. The Tenant is awarded costs assessed at Kshs. 12,000/= deductible from monthly rent.
- f. The OCS Ngundune Police Station to assist in compliance with these Orders and ensure that peace prevails.
- g. The Complaint dated 8th December 2023 is marked as settled in the above terms.
- h. File is marked as closed.

HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by Hon P. Kitur on 10th July 2024 in the presence of Ms. Gitari for the Landlady and the Tenant appearing in person.

HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

