



**Mbichi & another v Meru Catholic Secretariat (Tribunal Case
E039 of 2023) [2023] KEBPRT 1207 (KLR) (17 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1207 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E039 OF 2023
M MAKORI, MEMBER
OCTOBER 17, 2023**

BETWEEN

NICHOLAS MURIUKI MBICHI 1ST APPLICANT

JOYCE MAKANDI MBICHI T/A MERU VARIETY STORE 2ND APPLICANT

AND

MERU CATHOLIC SECRETARIAT RESPONDENT

RULING

1. The present claim was filed vide an application dated 10/8/2023 and supported by the supporting affidavit of Nicholas Muriuki Mbichi and which application was opposed *vide* a Replying Affidavit dated 20/8/2023 and deposed to by Fr. Patrick Micheni Kaaria on behalf of the Respondent.
2. The Applicant further swore a Supplementary Supporting Affidavit dated 11/9/2023. The summary of the claim is adopted as presented by the pleadings filed and summarized by the Tribunal as below.
3. The parties herein are in a Landlord-Tenant Relationship started in 1975 and where the Tenant has been staying on the suit property subject to the payment of rent.
4. It is the Applicants' claim that the Respondent would like to increase rent of the suit property from Kshs 45,000.00 to Kshs 172,000.00 and which claim was vehemently refuted by the Respondent who averred that the reason for issuing the termination notice was to be able to carry out renovations.
5. From the pleading it is clear that the issue of the amount of rent payable has been contentions and which culminated to the filing of several claims including the recent one being Meru Tribunal Case No. E036 of 2022 and which according to the Respondent was withdrawn to pave way for discussion between the parties.



6. In the application dated 10/8/2023 the applicant though having averred to have received an eviction notice, nothing was attached to guide this Honourable Court. However, the Respondent had produced in this Court a Notice for Termination of Tenancy dated 7/12/2022.
7. From the totality of the pleadings filed by parties and submissions made, one issue posits itself for determination: Whether the Notice to Terminate Tenancy dated 7/12/2022 and delivered upon the 1st Applicant is valid and what is the appropriate remedies available to the parties which issues I shall discuss as below
8. Whether the Notice to Terminate Tenancy dated 7/12/2022 and delivered upon the 1st Applicant is valid and what is the appropriate remedies available. To address this issue I would like to focus on the provisions of Shops, Hotels and Catering Establishments) Act on termination of a tenancy.
9. 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.

10. 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.”

- 11. From above cited provision of the law and authority, it is without a doubt that the Notice to Terminate dated 7/12/2022 is in the prescribed form, the applicant was given a duration of two months after which he was supposed to pave way for renovation and improvement of the suit property by 8/2/2023.
- 12. The Applicants have in addition conceded that indeed there haven't been material renovations and improvements on the suit property and as thus to my mind the reason made for termination is valid and genuine.
- 13. Further Section 7(1) (f) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Chapter 301 Laws of Kenya Act provides that some of the grounds upon which the Landlord may seek to terminate tenancy include;
 - (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



14. It was also stated in the case of; *Fisher v Taylors Furnishing Stores Ltd* [1956] 2 All ER 78, that;

There must, therefore, be an intention and it must be an intention which in point of time is related to the termination of the current tenancy. It seems to me that the intention must be to do one of the following things: (i) to demolish the premises comprised in the holding; or (ii) to reconstruct the premises comprised in the holding; or (iii) to demolish a substantial part of the premises comprised in the holding; or (iv) to reconstruct a substantial part of the premises comprised in the holding; or (v) to carry out substantial work of construction on the holding; or (vi) to carry out substantial work of construction on a part of the holding.

If the landlord prove an intention to do one of those things, and to do it on the termination of the current tenancy, he must then prove that he could not reasonably do it without obtaining possession of the holding.

15. In the current case the notice issued by the Landlord stated that the grounds for termination were to renovate the existing premises and develop the property. From the case above, the grounds stated by the Landlord have been included the renovations and improvements suffices as “proof of intention as and that they cannot reasonably carry out the demolitions and developments without terminating the tenancy

16. Based on the above evidence by the Landlord it is the contention of this Tribunal that the Landlord has sufficiently shown that there exists a firm and real intention to renovate and improve the existing premises. On this basis therefore, I find that the Landlord has convinced this Honourable Court that the renovations and improvements to be conducted in the suit premises are substantial and extensive in nature and require vacant possession of the suit premises.

17. Based on the foregoing, the Tribunal makes the following orders

- a. The Tenant’s references dated 10/8/2023 are hereby dismissed.
- b. The Tenant shall grant the Landlord vacant possession of the premises within 30 days’ failure to which the Landlord is at liberty to reclaim the suit premises through break in with the assistance of OCS Meru Police Station.
- c. Each party shall bear their own costs

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF OCTOBER 2023.

HON. MIKE MAKORI (MR.)

In the presence of;

Mr. Ireri for Respondent/Landlord

Ms. Kinyanjui for Tenant/Applicant

