



REPUBLIC OF KENYA

BUSINESS PREMISES RENT TRIBUNAL

VIEW PARK TOWERS 7TH & 8TH FLOOR

TRIBUNAL CASE NO. 77 OF 2020 (NYERI)

MUSTAFA SHARRIF ABDALLA.....APPLICANT

VERSUS

MARITE ENTERPRISES LTD..... RESPONDENT

RULING

1. By a notice of preliminary objection dated 15th March 2021, the Tenant is challenging this Reference on 4 principal grounds to wit:-
 - i. The Landlord's notice dated 16th November 2021 is incompetent, non starter and an abuse of the process of court.
 - ii. The Landlord's notice is issued by an incompetent person who lacks capacity to bring this matter in its own name because this matter touches on the estate of a deceased person.
 - iii. The grounds upon which termination is sought is unknown to law and/or not supported with any material or cogent evidence or at all.
 - iv. The Tenant has not defaulted in paying rent and/or delayed in payment and is not in breach under the tenancy.
2. The objection was argued orally and the Tenant's counsel repeated the contents of notice saying that the same is futuristic, issued by a body which has no legal capacity on account of lack of letters of administration and that the ground stated is not supported by law.
3. The Landlord's agent through its counsel submitted that equity looks at the intent and that the notice had a human error/technical error.
4. In regard to the issue of capacity it was submitted that the agent acts for beneficiaries of the deceased Landlord. I was referred to the case of RAMADHAN MOHAMMED ALI –VS- HASHIM SALIM GHANIM (2015) eKLR where it was held that it was not necessary to take out letters of administration as long as one demonstrated entitlement to rent and that the agent was competent to issue notice.
5. It was further submitted that the notice was for increment of rent as opposed to termination.
6. I have considered the submissions of both counsels and the only issue for determination is whether the notice of preliminary objection ought to succeed or fail.
7. The Landlord's notice herein is dated 16th November 2021 and it is expressed to take effect on 1st February 2021. The Landlord's counsel admits that the notice has an error and that equity looks at the intent rather than form.
8. Section 4(4) of Cap. 301 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”.
9. The foregoing section is very clear that the issue of when the notice is issued and the effective date is critical to the rights of both the issuing and receiving party. Any defect in dates is fatal to the notice. In this regard I rely on the decision in Lall -vs- Jeypree investments ltd which was cited with approval among others in Fredrick Mutua Mulinge T/a Kitui uniform –vs- Kitui Teachers Housing Cooperative Society Limited (2017) eKLR at page 5/6 as follows:

“The Landlord and Tenant (shops, Hotels and catering Establishments)Act is an especially enacted piece of legislation which creates a privileged class of tenants for the purpose of affording them the protection specified by its provisions against ravages of predatory landlords. Such protection can only be fully enjoyed if the provisions of the Act are observed to the letter otherwise the clearly indicated intention of the legislature would be defeated. In order to be effective in this fashion, the Act must be construed strictly no matter how harsh the result.....The Landlord and Tenant Act laid down a code which parliament intended to be followed and if a Landlord does not give notice of termination as prescribed, the notice will be ineffectual. This may seem a technical and unmeritorious defence but there is no doubt that the court has no power to dispense with these time limits, if the defendant chooses to object at the proper time. This is an Act which requires in so far as the giving of the notice is concerned absolute and complete not merely substantive compliance with its peremptory provisions”.

10. The foregoing decisions are binding on me and I find and hold that the notice issued herein is defective, null and void for all purposes.

11. I only need to address one more issue on capacity of the agent to issue notice to the tenant notwithstanding failure to obtain letters of administration in respect of the deceased Landlord's estate.

12. Guided by the decision in Ramadhan Mohammed Ali – vs- Hashim Salim Ghanim (2013) eKLR which was upheld by the Court of Appeal in Civil Appeal no. 64 of 2015 (Mombasa), I hold that the agent was entitled to issue notice under Cap. 301 Laws of Kenya notwithstanding lack of letters of administration in respect of the deceased Landlord's estate.

13. Having come to the foregoing conclusions, I need not address the other grounds of objection as it is by now clear that the preliminary objection has succeeded on account of the defective notice served upon the Tenant.

14. I proceed to strike out the said notice with costs of Kshs.15,000/- to the Tenant.

15. The Landlord shall be at liberty to issue a proper notice.

It is so ordered.

RULING DATED, SIGNED & DELIVERING THIS 18TH DAY OF JUNE, 2021

HON. GAKUHI CHEGE

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

In the absence of parties.