



**Munywoki v Mutwii (Tribunal Case E829 of 2022)
[2023] KEBPRT 1201 (KLR) (5 May 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1201 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E829 OF 2022
CN MUGAMBI, CHAIR
MAY 5, 2023**

BETWEEN

JANUARIES MUSYOKI MUNYWOKI APPLICANT

AND

BERNARD KIVILU MUTWII RESPONDENT

RULING

Introduction

1. The tenant/Applicant's notice of motion dated September 20, 2022 seeks an order restraining the landlord/Respondent from evicting the Applicant from the business premises erected on plot No. 390 Kithendu Market (sofia) commonly known as Mandela Bar pending the hearing and the determination of this suit.

The Applicant has also sought the assistance of the OCS Kithimani police station on the enforcement of the orders.

The Applicant's Depositions:

2. The tenant/Applicant has sworn an affidavit on September 20, 2022 wherein he has deposed that he entered the premises about five (5) years ago as a controlled tenant paying a monthly rent of Kshs. 10,000/= and has been diligently paying his rent.
3. The tenant has further deposed in the said affidavit that the landlord cunningly served the notice to vacate upon the tenant's employee, one Lavender Cherotich in June, the said employee left employment without alerting the landlord of the notice.
4. The tenant has also deposed that he was only shown the notice by a new employee on 18th September 2022 when the landlord sent an emissary to ask the tenant to vacate.



5. The tenant further depones that he owns a bar and butchery in the suit premises and has nowhere to relocate his business in such a short period.
6. It is further deponed by the tenant that, he has spent over Kshs. 400,000/= in improving the suit premises and invested in equipment worth Kshs. 1,500,000/= all improvements done with the knowledge and approval of the landlord.

The Landlord's Depositions:

7. The landlord has filed a replying affidavit sworn on November 25, 2022 wherein he has deponed that during the period of the tenancy, the tenant did not carry out any renovations on the suit premises.
8. The landlord has deposed in his replying affidavit that the tenant was not only aware of the notice to terminate his tenancy, but that indeed the tenant was served personally with the notice and it is most insincere for the tenant to state that he only came to learn of the notice in September 2022.
9. The landlord further depones that; after receiving the notice to terminate the tenancy, the tenant on June 23, 2022 sent one Edward Kaloki to initiate a meeting between the parties but the landlord declined as he was keen in following the law and further it is the landlord's view that the tenant is cunningly seeking to avoid the structures of the lease agreement between the parties.
10. The only issue that arises for determination is whether the tenant is entitled to the prayers sought in his application.
11. The landlord's notice to terminate tenancy is the one dated June 20, 2022. Its effective date is September 20, 2022. The notice was therefore for a period of more than two calendar months. I find the same to be a valid notice to terminate tenancy and in conformity with Section 4(4) of Cap 301 which provides as follows:-

“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.

Provided

- i.
 - ii. where the terms and conditions of a controlled tenancy provide for a period of notice exceeding two months, that period shall be substituted for the said period of two months after the receipt of the tenancy notice.”
12. The landlord's notice to terminate the tenancy therefore came into effect on September 1, 2022 in terms of the proviso (ii) to Section 4(4) above.

Under Section 6(1) of Cap 301, the tenant is required to have filed his reference to the Tribunal before the date upon which the notice was to take effect. This therefore means that the tenant ought to have filed his reference before 1.9.2022. Even if I was to work with the date of September 20, 2022 indicated in the termination notice as the effective date, the tenant would still have been required to file his reference to the Tribunal latest September 19, 2022 and not 20.9.2022. Either way, the tenant failed to comply with the provisions of Section 6(1) of Cap 301.
 13. The tenant admits that one of his employees namely; Lavender Cherotich was served with the notice to terminate tenancy in June (presumably 2022). Although he states that the said employee did not alert him of the notice to terminate, he curiously states that the landlord served the notice upon the employee in June!



How did the tenant arrive at the month of June as the month of service upon his employee if he was not alerted by the same employee?

I do not think the tenant is being truthful when he therefore says he was only informed by another employee of the existence of the notice to terminate tenancy on September 18, 2022. I note that the said employee remains undisclosed.

14. The consequence of the tenant's failure to comply with the provisions of Section 6(1) of Cap 301 is that the provisions of Section 10 of the Act (Cap 301) came into effect. Section 10 of Cap 301 provides as follows:-

“Where a landlord has served a notice in accordance with the requirements of Section 4 of this Act on a tenant and the tenant fails within the appropriate time to notify the landlord of his unwillingness to comply with such notice or to refer the matter to a tribunal, then subject to Section 6 of this Act, such notice shall have effect from the date therein specified to terminate the tenancy or terminate or alter the terms and conditions thereof or the rights or services enjoyed thereunder.”

15. In light of the above provision of the law, the tenancy between the parties herein terminated on September 1, 2022 and the Applicant is therefore no longer a tenant of the Respondent.
16. Consequently, the tenant's reference and application are hereby dismissed and the tenant ordered to vacate the suit premises within the next ninety (90) days failing which the tenant is to be evicted by a duly authorized auctioneer. The tenant will continue to pay rent during the said three months period.
17. The tenant will also bear the costs of the application and the reference assessed at Kshs. 20,000/= (Twenty thousand only)

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF MAY 2023

HON. CYPRIAN MUGAMBI

CHAIRMAN

5.5.2023

