



**Kiniu v Wangai & another (Tribunal Case E385 of 2023)
[2023] KEBPRT 1244 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1244 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E385 OF 2023
P MAY, MEMBER
JULY 26, 2023**

BETWEEN

LAWRENCE DAVID NG'ETHE KINIU TENANT

AND

STEPHEN WANGAI 1ST RESPONDENT

BENWA REALTORS 2ND RESPONDENT

RULING

1. The Tenant filed a Reference to this Honourable Tribunal dated 13th April , 2023 , in line with the provisions of Section 12 (4) of the Landlord and Tenants (Shops, Hotels and Catering Establishments) Act, opposing the notice of termination issued by the landlord.
2. The Reference was accompanied by a Notice of Motion Application, brought under Certificate of Urgency, and supported by the Affidavit of Lawrence David Ngethe Kiniu , all dated 13th April 2023. In the Application, the Tenant sought several orders key being restraining the landlord and or its agents from evicting the tenant which orders were granted pending inter partes hearing. The Tenant was ordered to serve the Application to the Landlord and hearing was scheduled for 22nd May, 2023 .
3. The Honorable Tribunal directed that the application be canvassed by way of written submissions. Parties exchanged documents and submissions in support of their respective positions.
4. The sole issue for determination in this matter is whether the Landlord's notice of termination dated 23rd January, 2023 was lawful and valid?



Tenant's Submissions

5. The Tenant advanced their case vide a Reference Application, a Notice of Motion and a Supporting Affidavit sworn by the applicant, all documents dated 13th April, 2023. The Tenant also filed a further Affidavit sworn and written submissions.
6. The Tenant submitted that he has been a loyal Tenant to the Landlord and has been faithfully paying rent as when it fell due. He was therefore taken a back when the landlord issued the notice to have them vacate the demised premises. The tenant has annexed a bundle of receipts and other documents in support of this position.
7. The Tenant submits that the termination of the tenancy by the Landlord is malicious, unlawful and unjustified, and urged this Honourable Court to find that the notice of termination of the tenancy by the landlord dated 23rd January, 2023 is unlawful as it was purportedly served on 11th April, 2023. The tenant has disputed the affidavit of service filed in court.

Landlord's Submissions

8. The Landlord responded to the Tenant's claims vide a Replying Affidavit dated 10th May, 2023 and written submissions.
9. The Landlord averred that the notice to terminate tenancy was in the prescribed form and the grounds set out in the same were within those stipulated by the Act. The landlord maintained that contrary to the assertion by the tenant that the notice period fell short of the prescribed timeline, the same was duly served on 1st February, 2023.
 - a) Formal requirements of notice of termination of a tenancy.

10. Section 4(2) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Cap 301 Laws of Kenya (hereinafter referred to as the "Act") 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."

11. Additionally, Section 4(4) 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, unless the terms and conditions of the tenancy provide for a period exceeding two months or the parties to the tenancy agree in writing to a lesser period of notice.
12. 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.”

13. Based on the evidence tendered before this Honourable Court, it is evident that the parties in their agreement did not make provision for the period of notice required before termination of the tenancy agreement. As such, section 4(4) of the Act as mentioned above applies, thus the default notice period for termination of the tenancy herein is two months.
14. The notice to vacate was issued by the Landlord on 1st February, 2023, and required the Tenant to vacate the premised by 1st April, 2023. I note that the duration of the notice fell below the two months period albeit by a day thus contravened the mandatory provisions of the Act. This computation is based on the disputed affidavit of service.
15. There will be no need to belabor on the merits of the grounds set out in the notice since I have made a finding that the same was irregular. The tenant thus succeeds.
16. In the end, I shall make the following final orders:
 - a. The notice of termination dated 23rd January, 2023 is quashed and the reference dated 13th April, 2023 is allowed.
 - b. Each party shall bear their own costs

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF JULY 2023

HON. P. MAY

MEMBER

26.7.2023

In the presence of; Mwikali holding brief for Mr. Murango for the tenant

No appearance for the landlord

