



**Wangui & another v Twelve Investment Limited & 2 others (Tribunal Case E1124 of 2023) [2024] KEBPRT 1145 (KLR) (7 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1145 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E1124 OF 2023  
M MAKORI, MEMBER  
MAY 7, 2024**

**BETWEEN**

**JOAN WANGUI ..... 1<sup>ST</sup> TENANT**

**JOHN MAINA ..... 2<sup>ND</sup> TENANT**

**AND**

**TWELVE INVESTMENT LIMITED ..... 1<sup>ST</sup> LANDLORD**

**FRANCOM GENERAL AGENCIES ..... 2<sup>ND</sup> LANDLORD**

**CHABRIAN AGENCIES ..... 3<sup>RD</sup> LANDLORD**

**RULING**

1. This Ruling is in respect to a reference dated 10/11/2023 and a Notice of Motion Application dated 10/11/2023 by the Tenants/Applicants and which Reference was opposed vide a Replying Affidavit dated 22/01/2024 and deponed by Gibson Gitau.
2. The Tenants/Applicants additionally filed a Supplementary Affidavit dated 07/03/2024 in response to the Respondents' Replying Affidavit dated 22/01/2024.
3. The parties were directed on the filing of submissions on even dates and this court have had a sight of the Tenants/Applicants 'submissions dated 08/03/2024 as at the time of preparing this Ruling.
4. From the totality of the pleadings and submission filed by parties one issue poses itself for determination and that is whether the Reference Dated 10/11/2024 as well as Notice of Motion Application dated 10/11/2024 are merited?
5. To address this issue I would like to focus on the provisions of *Shops, Hotels and Catering Establishments Act* on termination of a tenancy. 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.



6. 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.”

7. The Respondent/Landlord through their pleadings implicitly admitted to having sent a Demand Notice date 22/03/2024 and received on the same date giving the Tenants/Applicants Seven Days to clear the rent arrears of kshs 52,000/=
8. In the Replying Affidavit dated 22/01/2024 the Respondents/Landlords Claim that the Tenants/Applicants are only in rent arrears of 18,050/= while the Tenants/Applicant in addition to sharing the Mpesa Statements to demonstrate the extent they have made to pay rent they admit to only have Kshs 7,000/= as the pending rent arrears.
9. I am alive to the position of the law on the issue of a termination notice as discussed in *Manaver N. Alibhai T/A Diani Boutique v South Coast Fitness & Sports Centre Limited*, Civil Appeal No. 203 of 1994, stated that: -

“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 ground upon 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.

10. It is evident that the Demand Letter Dated 22/03/2023 was not in Form A as prescribed by the *Act* and it only provided for seven days before an action would be taken contrary to what is expected.



11. From above cited provision of the law and authority, it is without a doubt that the Demand Notice Dated 22/03/2023 is not in Form A as contemplated under the Act and appropriate case laws as highlighted above.
12. Having established that the notice of termination of the tenancy was not properly drafted I shall proceed to analyze the substance of the notice with regard to the grounds of termination of the tenancy as follow

### **Analysis and Determination**

13. Accordingly, Section 7 of the Act clearly stipulates the grounds upon which a Landlord may seek to terminate tenancy. One of the grounds as enshrined in Section 7(f) of the Act is: -
 

7(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. In expounding on the threshold that should be met by a Landlord placing reliance on Section 7(1)(f) of the Act as a ground for termination of tenancy, the High Court in the case of Auto Engineering Ltd Versus M. Gonella & Co. Ltd (1978) eKLR stated as follows: -
 

“...First, it is correct that the wording of section 7(1)(f) is “demolish or reconstruct”, and not merely to effect repairs. The distinction can of course be important; for while mere repairs may not necessarily mean that the landlord needs possession of the premises, an intended demolition or reconstruction of a substantial part of the premises would in all probability be frustrated if the landlord could not obtain possession, and that is why this provision exists.”
15. In order to succeed in a claim of vacant possession against a Tenant/Applicant it is without a doubt that the Honourable Court must be satisfied that the Landlord/Respondent followed the prescribed procedure(s) in due time to notify the tenant to vacate the premises and the grounds upon such termination are relied upon properly explained to the Tenant/Applicant.
16. The Landlords/Respondents alleged that the Tenant/Applicant had breached the Terms of a Tenancy Agreement more particularly by failing to pay rent arrears of Kshs 52,000/= as at 22/03/2023. In the Replying Affidavit dated 22/01/2023 the Respondents/Landlords claims that it is only Kshs 18,050/= that is pending. This give an inconsistent record which is not convincing as the correct position.
17. I have noticed after considering the totality of material placed before me that the Respondents/Landlords did not adhere to the terms of Landlord and Tenant (Shops, Hotels and Catering Establishments) Act and as thus I have not option than to apply my mind accordingly.
18. The Tenants/Applicants admitted to be in arrears of kshs 7,000/= after demonstrating clearly how much amounts have been paid by way of Mpesa Statements enclosed in the application and in Supplementary Affidavit.
19. Based on the foregoing, pleadings and submissions made by parties the Tribunal makes the following orders
  - a. The Demand Notice Dated 22/03/2023 and seeking to terminate the Tenancy Relationship is null and void for contravening Section 4 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act



- b. The Tenants/Applicants shall clear the Outstanding Rent arrears of Kshs 7,000/= as at the time of this Ruling within 30 days' failure to which the Landlords/Respondents shall be at liberty to Distress for Rent.
- c. That in the Intervening period the Landlords/Respondents their agents and/or people acting under their instructions are restrained from evicting, locking out, foreclosing, terminating, or interfering with the Tenant/Applicant peaceful occupation of the demised premises.
- d. That the OCS Pangani Police Station to assist in compliance of the Orders.
- e. Each party shall bear their own costs.

**HON. MIKE MAKORI**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON MIKE MAKORI THIS 7<sup>TH</sup> MAY, 2024**

In the presence of the Tenants/Applicants and Counsel for the Landlord/Respondents.

**HON. MIKE MAKORI**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

