



Bwire v Nondi (Tribunal Case 11 of 2021)
[2024] KEBPRT 174 (KLR) (23 February 2024) (Judgment)

Neutral citation: [2024] KEBPRT 174 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 11 OF 2021
P MAY, MEMBER
FEBRUARY 23, 2024

BETWEEN
LAZARUS BWIRE APPLICANT
AND
NORMAN TITO NONDI RESPONDENT

JUDGMENT

1. The landlord issued the tenant with a notice to terminate tenancy dated 10th February, 2021. The grounds set out in the said notice was that the landlord wished to use the premises for their own use and that the tenant had defaulted in paying rent as when it fell due. The tenant was aggrieved by the said notice and filed the reference dated 2nd March, 2021.
2. The parties filed their respective statements and documents in support of their positions. The reference was set down for hearing whereby each party called witnesses who testified in support of their respective positions. In the end, the parties also filed written submissions to advance their respective positions. It is clear from the record that the parties have been involved in litigation in respect to the tenancy in question before and retired to draft this judgement bearing this in mind.
3. The tenant's case is fairly straight forward. He stated that he has occupied the premises for a long period; more than 2 decades and that the rent payable was previously set by this Tribunal at Kshs. 1000 in 2009. The same has never been revised as the landlord has not taken any lawful step to revise the same. The tenant states that the landlord has refused to receive rent and that he had resorted to frustrating him. During cross- examination, he stated that the rent payable in 2008 was Kshs. 2000 before the Tribunal reduced it to Kshs. 1,000.
4. The landlord's rejoinder to the tenant was equally straightforward. The landlord did not dispute to the long period the tenant had occupied the premises. He further admitted to the order of this Tribunal reducing the rent to Kshs. 1000 and stated that he had not challenged the same. He maintained that



he wished to use the said premises for own use and thus urged the Tribunal to allow his notice. He also stated that the tenant had accumulated rent arrears.

Analysis

5. The Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Chapter 301 Laws of Kenya Act at section 4(2) 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.

6. Section 4(4) further 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

7. In the case of Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited, Civil Appeal No. 203 of 1994 it was 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 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.”

8. In this case the Landlord issued the Tenant with a notice to terminate tenancy on 10th February, 2021 which was to take effect from 1st May 2021. Based on the above provision, the said notice was to take effect after two months which is as per the provisions of Cap 301. As such the said notice can be deemed to be valid.

9. Section 7(1) (g) 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;

(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. The court provided a threshold that Landlords have to meet before they can satisfactorily be granted possession and stated as follows:

“For this purpose the Court must be satisfied that the intention to reconstruct is genuine and not colourable: that it is a firm and settled intention, not likely to be changed: that the reconstruction is of a substantial part of the premises, indeed so substantial that it cannot be thought to be a device to get possession; that the work is so extensive that it is necessary to



get possession of the holding in order to do it; and that it is intended to do the work at once and not after a time. Unless the Court were to insist strictly on these requirements, tenants might be deprived of the protection which Parliament intended them to have.

It must be remembered that, if the landlord, having got possession, honestly changes his mind and does not do any work of reconstruction, the tenant has no remedy. Hence the necessity for a firm and settled intention.”

11. 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 proves 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.

12. In the current dispute, the notice issued by the Landlord stated that the grounds for termination were to put the premises to their own use. It is the contention of this Tribunal that the Landlord has not satisfied the above stated requirements to show their firm and settled intention to use the premises. The Tribunal considers this ground as vague as it cannot be clearly established as to how exactly the Landlord intends to use the premises.

Further they have failed to attach any proof to show this Tribunal of their intended use. Documents such as development plans or proof of funds would have sufficed to clearly demonstrate the intention to use the premises.

13. I will now turn to the issue of non- payment of rent. The tenant has stated and annexed some documents that he has been depositing rent to the Tribunal. The landlord having conceded to this fact, this ground is no longer tenable.

14. The landlord has in the attempts to salvage his situation invited the Tribunal to make an assessment of the rent payable. The Tribunal has noted that the current rent payable was settled in 2009. The property value and inflation may have increased over the period but the landlord is a victim of his own indolence as nothing precluded him from taking the relevant lawful steps to increase rent within the precincts of the law as provided under CAP 301. This Tribunal declines the invitation to be the counsel or legal advisor to one of the protagonists.

15. In the end, the Tribunal notes the need for the parties to manage their own contractual obligations. The following orders commend itself:

- a. Rent deposited on this account to the Tribunal shall be released to the landlord
- b. The tenant to pay any outstanding rent arrears that may not have been paid to the Tribunal within 14 days of receipt of the statement of account. In default the landlord to commence recovery proceedings without further reference to the Tribunal
- c. The reference dated 2nd March, 2021 is allowed with no orders as to costs.



RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23RD DAY OF FEBRUARY 2024.

HON. PATRICIA MAY

MEMBER

02.2024

Delivered in the presence of Kibiti for Odeny for the Tenant

No appearance for the landlord



<https://new.kenyalaw.org/akn/ke/judgment/kebp/2024/174/eng@2024-02-23>