Waliaula & another t/a Kimilili Vocational Rehabilitation Centre v Sakong (Tribunal Case E213 of 2024) [2025] KEBPRT 419 (KLR) (26 September 2025) (Judgment)

Neutral citation: [2025] KEBPRT 419 (KLR)

REPUBLIC OF KENYA

IN THE BUSINESS PREMISES RENT TRIBUNAL

TRIBUNAL CASE E213 OF 2024

GAKUHI CHEGE, CHAIR & J OSODO, MEMBER

SEPTEMBER 26, 2025

BETWEEN

KHAMISI WALIAULA & MAURICE MAKOKHA T/A KIMILILI VOCATIONAL REHABILITATION CENTRE ..... LANDLORD

AND

ABIUD SAKONG ..... TENANT

JUDGMENT

Introduction

1. This matter arises from the landlord's notice to terminate tenancy dated 9th September 2024 issued under Section 4(2) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301, Laws of Kenya. The said notice was duly served upon the tenant requiring him to vacate the premises on account of substantial rent arrears.

2. The landlords thereafter filed a Reference before this Tribunal dated 19th December 2024 seeking enforcement of the notice, recovery of arrears, and vacant possession. The tenant, despite service and directions by this Tribunal in its ruling of 20th June 2025 to file a response, failed and/or neglected to do so.

3. Consequently, the landlords moved the Tribunal to validate the notice and grant appropriate orders for recovery of possession and arrears.

B. Pleadings & Procedural History

4. The landlords' reference dated 19th December 2024 set out in detail the tenant's persistent default, citing rent arrears accumulated to the tune of Kshs. 870,000/=, and prayed for vacant possession.

5. The tenant neither filed a reference against the notice within the two months allowed under Section 6(1) of Cap 301, nor responded to the reference despite the Tribunal's express ruling of 20th June 2025

directing him to do so. The tenant's failure to act has the legal effect of allowing the landlord's notice to take effect by operation of Section 10 of Cap 301.

6. The landlords also filed affidavits of service sworn by a licensed process server confirming service of the notice and subsequent pleadings upon the tenant. The evidence of service remains uncontroverted.

C. Issues For Determination

7. From the record, the following issues fall for determination:

   i. Whether the landlord's notice dated 9th September 2024 is valid.

   ii. Whether the tenant's failure to file a reference or response rendered the notice effective under Section 10 of Cap 301.

   iii. Whether the tenant should pay the outstanding rent arrears and what remedies are available to the landlords.

   iv. Who should bear the costs of these proceedings?

D. Analysis & Determination

8. Section 4(2) of Cap 301 requires a landlord to issue notice in the prescribed form where termination or alteration of a tenancy is intended. The landlords in this case complied with this requirement. The notice dated 9th September 2024 was properly served and indicated the grounds relied upon.

9. Section 6(1) of Cap 301 provides:

> " A receiving party who wishes to contest such a notice may, within two months after the receipt thereof, refer the matter to a Tribunal."

10. Section 10 further provides:"Where a receiving party fails within the appropriate time to notify the requesting party of his unwillingness to comply with a notice, then, subject to this Act, such notice shall have effect from the date therein specified to terminate the tenancy."

11. The tenant herein did not file a reference under Section 6(1) and further failed to respond to the landlords' reference dated 19th December 2024 despite directions given by this Tribunal on 20th June 2025. This failure is fatal to his case.

12. The Court of Appeal in Saheb v Hassanally (1981) eKLR stated:

> " Where no reference is filed within the prescribed time, the notice issued by the landlord takes effect automatically and the tenancy stands terminated without further order of the Tribunal."

13. Similarly, in Republic v Chairman, BPRT ex parte Mehta (1995) eKLR the Court observed:

> " The Act provides strict timelines for a tenant to respond to a landlord's notice. Failure to act renders the notice effective by operation of law and ousts the Tribunal's jurisdiction to reopen the matter save as provided by statute."

14. In Caledonia Supermarket Ltd v Kenya National Examinations Council (2000) eKLR, the court emphasized:

> " The scheme of the Act is to ensure certainty in commercial tenancies. Where statutory notices are unchallenged, they crystallize into binding rights and obligations."

15. It is also settled that proper service was effected. In Shadrack Arap Baiywo v Bodi Bach (1987) eKLR, the court held:

> " The mode of bringing to the attention of the opposite party the existence of a suit is by service... Without such service, the court cannot be said to have assumed jurisdiction."

16. The tenant has not contested service. On the contrary, affidavits of service sworn by Patson Simiyu confirm that service was duly effected. Accordingly, the Tribunal is satisfied that the tenant was aware of the proceedings but chose not to participate.

E. Disposition

17. Having considered the pleadings and evidence, the Tribunal finds that the landlord's notice dated 9th September 2024 is valid and effective. The tenant's failure to file a reference under Section 6(1) and to respond to the landlords' reference dated 19th December 2024 despite directions of this Tribunal leaves no dispute for adjudication.

18. Accordingly, the Tribunal makes the following orders:

    a. The landlord's notice dated 9th September 2024 is declared valid, legal and effective. The tenancy is deemed terminated as of 15th December 2024.

    b. The tenant shall forthwith deliver vacant possession of the premises and in default shall be evicted therefrom with the assistance of the OCS, Kimilili Police Station.

    c. The tenant shall pay all outstanding rent arrears to date.

    d. In default of payment, the landlords are at liberty to use lawful means to recover the same.

    e. Costs of Kshs. 25,000/= are awarded to the landlords.

    It is so ordered

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF SEPTEMBER 2025

HON. GAKUHI CHEGE - (PANEL CHAIRPERSON)

HON. JOYCE AKINYI OSODO - (PANEL MEMBER)

BUSINESS PREMISES RENT TRIBUNAL

In the presence of:

Tenant present in person

No appearance by the Landlords