



**Muthoka v Pomoni Investments & 3 others (Tribunal Case E545 of 2022)
[2024] KETAT 1551 (KLR) (6 November 2024) (Judgment)**

Neutral citation: [2024] KETAT 1551 (KLR)

**REPUBLIC OF KENYA
IN THE TAX APPEAL TRIBUNAL
TRIBUNAL CASE E545 OF 2022
P MAY, MEMBER
NOVEMBER 6, 2024**

BETWEEN

STEPHEN KYALO MUTHOKA TENANT

AND

POMONI INVESTMENTS 1ST LANDLORD

ROSE WAIRIMU WAIGANJO 2ND LANDLORD

ANTONY WAIGANJO 3RD LANDLORD

DAVIS MUCHINA 4TH LANDLORD

JUDGMENT

1. The tenant approached the Tribunal by filing the reference under section 12 (4) of CAP 301 dated 23rd June, 2022. The reference challenged the landlords' actions of welding the tenant's premises with a view of terminating the tenancy. He therefore complained that the landlord had in the process damaged his goods occasioning a loss worth kshs. 320,000/- This cost consisted the meat and the structures at the eatery. The tenant had also filed a reference number E 1074 of 2022 in opposition to the issuance of an illegal notice of termination of tenancy by the landlord.
2. The hearing of the reference proceeded on 27th February 2024 whereby each party called witnesses who testified in their favour. The Tenant testified together with an additional witness. It was his testimony that the Landlord welded and shut the doors to the premises thus damaging his goods. The Tenant stated that the landlord had proceeded to disconnect water supply to the tenant in a view to forcibly evict the Tenant. The Tenant admitted that he was served with a notice but did not respond as it did not have an expiry date. Further, the tenant denied allegations that he had sub-let the premises, claiming that the rent paid by one Aline Nakure Kyalo was paid on his behalf as Aline is his wife. He also argued that he was not in any rent arrears.



3. The Landlord testified in support of his case. He accused the tenant of paying rent late and sub-letting the premises. He denied disconnecting water lines to the Tenant and that the lack of water was due to the Tenant's unauthorized plumbing works. The Landlord stated that he had served the Tenant with three notices all of which the Tenant did not honour. The Landlord thus closed their case and the parties elected to file written submissions.
4. I have considered the evidence and submissions on record and wish to proceed as follows:
5. The parties herein do not dispute to the existence of landlord and tenant relationship which is in the nature of controlled tenancy. The agreed monthly rent was Kshs. 10,000/- The issue of payment of rent has been in contention as there have been instances when the tenant defaulted in paying rent when it fell due.
6. The Tribunal has been invited to determine the validity and merits of the notice of termination of tenancy. Section 4 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* states:
 4. Termination of, and alteration of terms and conditions in, controlled tenancy

(2)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.(4)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 that—(i)where notice is given of the termination of a controlled tenancy, the date of termination shall not be earlier than the earliest date on which, but for the provisions of this Act, the tenancy would have, or could have been, terminated;(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;(iii)the parties to the tenancy may agree in writing to any lesser period of notice.
7. It is evident that the notice of termination of the tenancy herein was in Form A as prescribed by the Act. Further, the notice of termination of the tenancy was to take effect on 1st May, 2022, being a period exceeding two months as required by the Act.
8. The tenant's duty to pay rent is cardinal and forms the cornerstone of the tenancy relationship. In the case of Samuel Kipkorir Ngeno And Another –versus- Local Authorities Pension Trust (Registered Trustees) And Another (2013) eKLR it was held that;

“A tenant first and main obligation is to pay rent as and when it becomes due for the landlord has the right to an income from his investment. Why would a tenant allow himself to fall into such huge arrears of rent?

The temporary injunction sought in the present application is an equitable remedy at the court's discretion. He who comes to equity must come with clean hands. A tenant who in in huge arrears is underserving of the courts discretion. The court cannot be the refuge of a tenant who fails to meet his principal obligations of paying rent as and when it becomes due.”
9. In the present dispute, the tenant has not provided evidence of paying rent. He has only provided M-pesa statements showing payment of rent for months March to November 2022, which the Landlord does not dispute. The rent for December has not been proved by the Tenant. The Landlord also admitted that he failed to issue receipts for the rent paid for the mentioned month. My assessment of



the relationship between the parties herein reveals that the same had ceased being cordial. It is expected that under such circumstances the tenant would ensure that they get receipts for the rent payment made.

10. The conduct of the tenant is one that reeks of indolence. The Landlord testified that he locked the demised premises and opened early the following day. The tenant was further issued with a notice of termination but they sat pretty folding their hands. A notice to terminate is not a mere piece of paper. It is supposed to prompt action by the recipient.
11. Having made the findings, the following orders commend itself:
 - a. The notice of termination issued on 17/9/2022 is upheld. The tenant to vacate the demised premises forthwith
 - b. The tenant shall pay any outstanding rent arrears
 - c. The nearest police station to supervise compliance with order (a) above
 - d. There are no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF NOVEMBER, 2024.

HON. PATRICIA MAY - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the absence of parties

