



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO.324 OF 2005**

**MEGA FRIES LTD.....PLAINTIFF**

**VERSUS**

**MUKESH KUMAR VELJI SAVLA.....1ST DEFENDANT**

**AJAY VELJI SHAH.....2ND DEFENDANT**

**RAJESH VELJI SAVLA.....3RD DEFENDANT**

**SUNIL CHAMPAKLAL SAVLA.....4TH DEFENDANT**

**RULING**

The applicant had entered into a lease agreement with the previous landlord. That lease agreement though not registered had an option to renew. The previous landlord sold and transferred the suit premises to the respondent who is now the registered owner. The term of the lease between the applicant and the previous landlord was expiring and the applicant notified the new landlord of his intention to renew the lease which was not acceptable to the respondent as he intends to renovate the premises and take possession. The old tenancy lapsed on 31st March 2005.

Mr. Sichangi for the applicant submitted that since the respondent had accepted rent from the applicant under the terms of the old tenancy, he was bound by the terms contained therein. But Mr. Kuria for the respondent submitted that the respondent was not privy to the old tenancy and therefore he is not bound by its terms. That is the position in law. Even assuming that the landlord was the same one, the exercise of the option to renew lease, on its wording gave rise to a new tenancy after the prescribed date.

Mr. Sichangi further submitted that since the new landlord purchased the suit premises with full knowledge that there were tenants there, and had accepted rent from them, then the tenancy should be regarded as periodic tenancy so that the applicant's tenancy comes under controlled tenancy and therefore he is protected under the provisions of Landlord and Tenant (Shops, Hotels and Catering Establishments) Cap 301. Once the tenancy is controlled, the applicant's tenancy could not be terminated or terms thereto altered otherwise than in accordance with the provisions of the Landlord and Tenant (Shops, Hotels, and Catering Establishments) Act Cap.301. The Act lays down clearly and in detail, the procedure for the termination of a controlled tenancy. Section 4(1) 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.

The notice of termination given by the respondent was clearly void and had no effect in law on the applicant's tenancy and the applicant was under no duty, legal or otherwise to react to it.

Prayer (b) of the Chamber Summons dated 18th March 2005 cannot be sustained in the event the respondent complies with the provisions of the Act in respect of procedure for the termination of

controlled tenancy.

Prayer (c) is granted until the respondent complies with the provisions of Section 4 of the Act. Costs of this application to the applicant. These are the orders of this court.

Dated and delivered at Nairobi this 3rd May 2005.

**J.L.A. OSIEMO**

**JUDGE**