



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. 678 OF 2000**

NATHALAL BJAGWANJI MEHTA

AND ANOTHER .....APPELLANT

VERSUS

MUBEEN EMPORIUM.....RESPONDENT

**J U D G M E N T**

The Appellant (the Landlord) appeals against the judgment of the Business Premises Tribunal in which it upheld a tenants defence to challenge its landlords notice to quit.

It is not in dispute that the landlord purchased the suit premises and were registered as owners of it on the 19.1.99. The Landlords are husband and wife. The Landlords had served a previous notice to quit on the tenants on the 31.1.1997 in respect of which the tenant filed a defence which has not been produced and, on the ground that the Landlords wished to demolish and reconstruct the suit premises.

The present notice to quit is based on the ground that the Landlords intend to occupy the suit premises for a period of not less than one year for the purposes of a business for themselves and partly for a residence.

The evidence was to the effect that the landlords occupy this premises on which they have shops but that is subject to a lease which will expire in some two years time or so and they wish to run the same business on this suit premises.

The Landlord in the person of the husband stated that they had an invalid son whom they wished to provide accommodation for on the ground floor of the suit premises and in order to do, some construction was necessary.

The right to an order for possession is contained in Section 7(1) g of the Landlord and Tenants (Shops, Hotels and Catering Establishments) Act in the following terms:-

**“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 as his residence”**

The proviso is that the Landlords interest in the premises was purchased or created within 5 years preceding the date of the tenancy notice.

In this case the interest of Landlords was created outside this 5 year period.

In order to succeed the Tribunal must be satisfied that the Landlord himself intends to occupy for a period of not less than one year.

The criteria for determining the landlords intention were dealt with in the case of **f Auto Engineering Ltd. Vs Gonella & Co. Ltd. 1978 KLR p 248.**

Apart from making a mere assertion that he intends to occupy the premises for a period of not less than one year the landlords intention can be gauged from surrounding circumstances which lead a court to find on a balance of probabilities that the Landlord has established such an intention. In his judgment the learned Chairman made a number of findings.

Firstly on page 2 last paragraph he states:

***“It is important for a Landlord to come out on this matter as a Landlord cannot be allowed to take possession if his intention is merely to put his adult children in houses at the premises.***

If the landlords intention was not to occupy the premises himself the Tribunal would be right to refuse an order for possession.

The learned Chairman at page 2 stated as his reason for holding that the landlord did not intend to occupy the premises for himself. As follows:-

***“In 1998, the landlord wrote a letter to her tenant that he wanted to create a room on the premises for his lame son – which shows that his aim is to create a residence for his son and not for himself.***

Section 71(g) refers to the occupation partly for a business or as his residence. Residence includes in my view a residence not only for himself but the family. It would be absurd for a court to say a landlord had to occupy the premises without his wife and children.

I think the Chairman misdirected himself in thinking that because the landlord was going to provide accommodation for his son it meant he did not intend to occupy it for himself.

The Chairman also found that in the authority of a case he cited without reference it was a mandatory requirement that all landlords should give evidence. In the present case the evidence of intention was given by the husband. The wife did not give evidence however I do not think an adverse inference can be drawn from this.

If the landlords were not related in anyway it might well be that they could have different intentions. I would say each case depends on its own facts as to how intention is to be proved.

The Chairman quite rightly addressed himself as to the matters to be borne in mind in determining intention as laid down in the case of Mohamed Hussein. A Bachari / A.M.A Kaderi V Hirjil Marek Shah & Others. Mombasa HCCA No. 39/93 as stated by Wambilianga J The Chairman’s reason but his reasons for holding lack of a genuine Intention was that it was important for the landlord or how he evidence or he would run two shops at the same time is in my view a misdirection.

The landlord had said in respect of his other shop that the lease was due to expire in two years time a fact which the Chairman doubted; however I can see no objection to a landlord running two businesses at the same time. On the evidence in this matter it is clear that the landlord already lived on the top part of the suit premises which would indicate that these premises were his main premises in which not only would he and his family live but also where it would be logical to carry on his business.

Looking at the matter as a whole the Chairman should have come to the conclusion that on the evidence before him the landlord had proved the intention to occupy the suit premises for at least one year

as a business and residence.

For these reasons I allow the appeal with costs to the appellants. The landlord will have vacant occupation on or before the 31.3.2003.

Delivered at Nairobi this 16th day of January 2003.

**P.J. RANSLEY**

**JUDGE**