



**Judith Wabosha Mwamburi t/a Kaddy Fashion & Supplies v Mbololo
Ushirika Company Limited (Environment and Land Appeal E009 of 2025)
[2025] KEELC 6189 (KLR) (24 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6189 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND APPEAL E009 OF 2025
EK WABWOTO, J
SEPTEMBER 24, 2025**

BETWEEN

**JUDITH WABOSHA MWAMBURI T/A KADDY FASHION &
SUPPLIES APPELLANT**

AND

MBOLOLO USHIRIKA COMPANY LIMITED RESPONDENT

*(An appeal against the decision and orders of the Business Premises and Rent Tribunal delivered
on 4th April 2025 in the Tribunal at Mombasa in the Original Reference No. E177 of 2022)*

JUDGMENT

The Appeal

1. This is an appeal against the decision and orders of the Business Premises and Rent Tribunal delivered on 4th April 2025 in the Tribunal at Mombasa in the Original Reference No. E177 of 2022 wherein the Tribunal dismissed the Appellant's reference with costs.
2. The Appellant being aggrieved with the said decision filed the instant appeal vide a Memorandum of Appeal dated 24th April 2025. The following grounds were raised in the Appeal:-
 - i. That the Learned Magistrate erred in law and fact in arriving at a decision that the termination notice issued by the Respondent was valid and enforceable thus requiring the Appellant to vacate the premises by end of April 2025.
 - ii. That the Learned Magistrate erred in law and fact by disregarding the evidence of the Appellant which when analysed in totality, proved that the impugned termination notice was invalid and therefore unenforceable in law.



- iii. That the Learned Magistrate erred in law and fact by failing to appreciate the facts of the case and the weight of the evidence on record against the correct legal position which would have yielded a just outcome.
3. The Appellant sought the following reliefs:-
- i. The appeal herein be allowed with costs.
 - ii. The entire Judgment delivered by the trial court be set aside and that this Honorable Court does uphold the Appellant's reference dated 13.5.2022.
 - iii. Such and any other order this Honourable Court may deem just and expedient.

Directions of the Court

4. Pursuant to the directions issued by this court, the Appeal was canvassed by way of written submissions. The Appellant filed submissions dated 1st September 2025 while the Respondent filed submissions dated 29th August 2025.

The Appellant's submissions

5. The Appellant submitted that the main issue for determination is whether the evidence on record could sustain the trial court's judgment.
6. Citing Section 4 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* together with Clause 3(c) of the agreement, it was contended that the computation of time indicates that the termination notice issued by the Landlord was for 2 months 9 days which was contrary to the 3 months notice as agreed by the parties. The case of National Bank of Kenya Ltd Versus Pipe Plastic Samkolit (K) Ltd & Another (2007) eKLR was cited in support.
7. The Court was urged to allow the appeal together with costs as against the Respondent.

The Respondent's submissions

8. The Respondent submitted that the notice was issued in the prescribed format and it was dated 23rd March 2022 with its effective date being 1st June 2022. The same amounting to two months and 6 days.
9. It was further submitted that the notice also specified the grounds under which the Respondent sought termination of the tenancy. Clause 3 required the Appellant to within one month notify the Respondent whether she would comply with the notice or not.
10. It was contended that the said notice was made in line with all the requirements of Section 4 of the Act. The same was valid and the Appellant never challenged the validity of the notice at the Tribunal and as such the same cannot be challenged at the Appellate stage.
11. As to whether the evidence on record proved that the notice issued by the Respondent was invalid and enforceable and that the Tribunal failed to appreciate the said evidence, it was submitted that the subject notice was as per the requirements of Section 4 of CAP 301. No evidence was tendered by the Appellant to show otherwise. Furthermore, the competence of the notice was not even questioned by the Appellant during trial and that the same is tantamount to raising a legal point on appeal that was never raised before the trial Tribunal and the Tribunal never had the opportunity to make a



decision on the same. Reliance was made to the Court of Appeal case Kenya Hotels Limited Vs Oriental Commercial Bank Limited (2018) KECA 692 (KLR) where it was held as follows:

“Where the applicant seeks to introduce an entirely new point, there are well known strictures that seek to ensure firstly, that an appellate court does not, in disguise, metamorphose into a trial court and make first instance determinations without the benefit of the input of the court from which the appeal arises..

Secondly, is the overriding concern to avoid prejudicing a party who is made to meet an entirely different case late in the day at the appeal stage, without the opportunity of adducing evidence that may be necessary to counter or dispel the new point.”

12. It was further submitted that pursuant to Section 7(1) Cap 301 which stipulates the grounds under which a Landlord may seek to terminate the tenancy and that in considering the said provisions, a Landlord must establish on a balance of probabilities and that it has a genuine intention to demolish and reconstruct on the subject property.
13. It was further submitted that with the above in mind, the Respondent called evidence to show that it has a plan approved by the municipal government for the construction of a shopping complex. A notification of approval of the plan from county government of Taita Taveta was also produced in evidence and the Payment receipt from the County Government for renewal of the plan was also availed during trial.
14. It was also submitted that the Respondent further entered into an agreement with a contractor for the construction of the said complex The Landlord further called evidence to show that it applied for a loan to fund the project, which loan was approved and granted. The letter offer, the instrument or charge and bank statement were produced to show the periodic disbursement of the loan. The cases of Auto Engineering Ltd Versus M. Gonella & Co. Ltd (1978) eKLR, Lavington Green Bookshop Limited Versus John Njoroge Kinuthia (2000) KEHC 66 (KLR) and Shipira Chola & 3 Others Versus James Samuel Peter Mirie (2003) eKLR were cited in support.
15. It was argued that no evidence was tendered to controvert the Respondent’s intention to demolish and construct the premises.
16. As to whether the Tribunal introduced extraneous material that led to it adopting a biased approach towards the Respondent, it was argued that the Tribunal in its judgment analyzed the Respondent’s notice both in terms of its form and substance and issued the appropriate orders. It was also argued that the Tribunal in analyzing the evidence on record found that the Respondent had tendered sufficient proof to show that it had started constructions and therefore required the premises back for that purpose.
17. The court was urged to find that the appeal lacks merit and dismiss the same with costs.

Analysis and Determination

18. This being a first appeal, the power of this court is set out in Order 42 Rule 32 of the Civil Procedure Rules. Being steered by the principles enunciated in the well-cited case of *Selle v Associated Motor Boat Company Ltd* [1968] EA 123, this court will not interfere with the impugned judgment save this court satisfies itself the learned trial magistrate misdirected herself thus arrived at an erroneous decision, undoubtedly exercised her discretion wrongly and occasioned injustice by such erroneous exercise.



19. The court has considered the entire record of appeal, the Memorandum and grounds raised in this appeal together with the parties written submissions and has outlined the following issues for determination:-
- i. The adequacy and validity of the Notice of Termination issued herein.
 - ii. Whether the Tribunal erred in law and fact in failing to properly consider the Appellant's evidence before it.
 - iii. Whether the Tribunal was justified on the facts, evidence and the law in arriving at its decision in dismissing the Tenant's reference.

Issue No. (i) The adequacy and validity of the Notice of Termination issued herein

20. The Appellant faulted the Tribunal for finding that the Termination Notice issued was valid and enforceable. It was contended that pursuant to Clause 3(c) of the tenancy agreement, the agreement was to be terminated by giving either party a notice period of not less than 3 months.
21. The Respondent on the other hand argued that the said Notice was issued in the prescribed format as stipulated under Section 4(2) of the Act.
22. The position of the law on the issue of a termination notice is now settled. The Court in *Manaver N. Alibhai T/A Diani Boutique vs. South Coast Fitness & Sports Centre Limited*, Civil Appeal No. 203 of 1994, stated that:

“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.”

23. Section 4 of the Cap 301 stipulates as follows:-

- “4(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall 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 the following provisions of this Act.
- (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.”

24. From the evidence that was tendered before the Tribunal it was not disputed that the lease agreement entered into in 2005 between the parties had expired but the Appellant continued to stay in the same until the Landlord issued a Notice of Termination. In the circumstances the Notice of Termination that was issued by the Respondent dated 23rd March 2022 which was to take effect on 1st June 2025



cannot be invalidated by this court as being illegal. The same was in compliance within the provisions of Section 4 of Cap. 301 and provided for the reason of its termination which was in line with the reasons stipulated under Section 7(7)(f) of the Act. The appellants argue that this is within exactly two months.

25. It goes without saying that the notices conformed with the provisions of Section 4 (4) of Cap 301 since they were not for less than two months.

Issue No. (ii) Whether the Tribunal erred in law and fact in failing to properly consider the Appellant's evidence before it

26. This issue address grounds 2 and 3 of the Appellant's Memorandum of Appeal. It was submitted the Tribunal failed to consider a crucial fact part of his evidence that the Respondent did not comply with the 3 months' notice as was stated in the tenancy agreement.
27. The Respondent on the other hand submitted that the Tribunal properly considered the entire evidence of the case before it issued its orders.
28. The court has carefully perused the Record of Appeal filed herein and the Ruling delivered by the Tribunal on 4th April 2025 and it is evident that the Tribunal considered the Notice and the grounds made therein before arriving at its decision. The Tribunal properly pronounced itself on the issue.

Issue No. (iii) Whether the Tribunal was justified based on the facts, evidence and the law in arriving at its decision of dismissing the Tenant's reference

29. The Appellant faulted the Tribunal in rendering at its decision, however this court having pronounced itself earlier on the issues raised herein, it is the finding of this court that the Tribunal cannot be faulted for the orders issued and it is therefore not open for this court to interfere with the same.

Conclusion

30. The upshot is that after careful review and analysis of all the grounds of appeal and the entire record, this court finds no fault with the decision of the Tribunal. Consequently, the appeal fails and is hereby dismissed.
31. On the issue of costs, costs are in the discretion of the court and in any event to a party who is successful. However, considering the circumstances of this case and the long existing landlord tenancy relationship between the parties herein, it will not be prudent to condemn the Appellant to bear the costs of the appeal.
32. In the circumstances, this court directs each party to bear own costs of the appeal.

Final orders

33. I am satisfied that the Tribunal addressed itself properly on the law and considered all relevant factors in arriving at its decision. Having addressed all the issues that were synchronized herein above, I now conclude as hereunder: -
- i. The Appeal is devoid of merit and is dismissed.
 - ii. Each party to bear own costs of the Appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 24TH DAY OF SEPTEMBER 2025.



E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Motuka for the Appellant.

Ms. Ali for the Respondent.

Court Assistant: Mary Ngoira.

