

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MAKUENI**  
**ELC APPEAL NO. 1B OF 2024**

JOSEPHINE KAVINDU MUINDE....  
.....APPELLANT  
-VERSUS-  
JACKSON MUTUNGA KIVAA.. ..  
RESPONDENT

*(Being an appeal from the ruling of the Business Rent Tribunal at Nairobi delivered on 21<sup>st</sup> November, 2023 by Hon. A. Muma (Vice Chair) in BPRT No. E923 OF 2023)*

**JUDGMENT**

1. The Appellant was a tenant of the Respondent at Mbooni Tulimani – Kithome Market where she was operating a bar business. On 13<sup>th</sup> July, 2023, the Respondent issued a notice to terminate the tenancy which was to take effect on 15<sup>th</sup> September, 2023. The reason for termination of the tenancy was that the Appellant was in arrears of rent to the tune of Kshs.12,000/= and had not been paying electricity bills.
2. When the termination notice took effect on 15<sup>th</sup> September, 2023, the Respondent engaged the Appellant in correspondence seeking vacant possession. Kenya Power disconnected electricity. The Appellant then moved to the Tribunal and filed an application under certificate of urgency on 21<sup>st</sup> September, 2023. The Appellant sought for an order for re-connection of the electricity and opening up of the premises among other orders.
3. On 22<sup>nd</sup> September, 2023, the Tribunal ordered re-connection of electricity and re-opening of the premises. The Appellant was directed to serve the application upon the Appellant for interparties hearing on 4<sup>th</sup> October, 2023. The Appellant’s application was heard on 4<sup>th</sup> October, 2023 and in a ruling delivered on 21<sup>st</sup> November, 2023, the Appellant’s reference and notice of motion dated 21<sup>st</sup> September, 2023 were dismissed and the Respondent’s

notice to terminate tenancy dated 13<sup>th</sup> July, 2023 was found to be valid. The Appellant was ordered to pay rent arrears of Kshs.12,000/= and electricity bill of Kshs.81,333.59 within 30 days. The Appellant was also ordered to pay costs of Kshs.20,000/=. This is what prompted the Appellant to file and appeal to this court.

4. The Appellant raised the following grounds of appeal:

- 1. The learned Vice-Chairperson erred in fact and in law in dismissing the tenant's/Appellants notice of motion application and reference dated 21<sup>st</sup> September, 2023.**
- 2. The learned Vice-Chairperson erred in fact and in law didn't consider illegal eviction notice which was served to the Appellant contrary to Cap 301 Laws of Kenya.**
- 3. The learned Vice-Chairperson erred in fact and in law didn't direct the Respondent to produce prove of service of the legal notice dated 13<sup>th</sup> July, 2023.**
- 4. The learned Vice-Chairperson erred in fact and law didn't consider the electricity bill emanates from the whole building and not from the Appellant business premises only. The KPLC account belongs to the Respondent and not the Appellant.**
- 5. The learned Vice-Chairperson erred in fact and n law dismissed the Appellant case with costs yet she do not have any accumulated rent arrears having paid rent up to December, 2023 via Mpesa to the Respondent.**

5. The parties were directed to file written submissions. The Appellant filed her submissions dated 25<sup>th</sup> February, 2025. The Respondent filed his submissions dated 13<sup>th</sup> May, 2025.

6. The Appellant submitted that she had no rent arrears and that the Respondent tried to evict her using a defective termination notice which was never served upon her. The Appellant submitted that the Respondent was in gross

violation of Section 4 of the Act was in disobedience of the interim orders granted to her as the business premises is still locked.

7. On the issue of the outstanding bill, the Appellant submitted that the Respondent is the one who pays electricity as he only has one meter which serves other tenants. She relied on the case of **Kamau & Another –vs- Makale t/a panorama Restaurant (BPRT No. E299 of 2023) 2024 KEBPRT 380 KLR** 20<sup>th</sup> March, 2024 ruling.

8. I have carefully considered the proceedings before the Tribunal, the memorandum of appeal as well as the submissions by the parties. My duty as the first appellate court was succinctly put up in the case of **Selle and Another –vs- Associated Motor Boat Co. Ltd & Others EA 123** as follows:

**“....An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make allowance in this respect. In particular this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either it has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence of if the impression based on the demeanor of a witness is inconsistent with the evidence in the cases generally”.**

9. There are three issues for determination in this appeal. The first is whether the notice of termination was properly issued. The second is whether the Appellant’s reference was properly dismissed. The third is whether the Appellant’s notice of motion dated 21<sup>st</sup> September, 2023 was properly dismissed.

10. On the first issue, it is the Appellant's contention that the termination notice was defective and that it was not properly served. The Landlord and Tenant (shops, hotels and catering establishments) Act Cap 301 [The Act] provides elaborate provisions which must be followed if a landlord wishes to terminate a controlled tenancy.

11. Section 4(2) of the Act provides as follows:

**“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”.**

12. Section 4(4) of the Act provides as follows:

**“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”.**

13. Section 4(5) of the Act provides as follows:

**“A tenancy notice shall not be effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and**

**requires the receiving party to notify the requesting party in writing, within one month after the date of receipt of the notice, whether or not he agrees to comply with the notice”.**

14. In the instant case, the Respondent alleged that the Appellant was in arrears of rent to the tune of Kshs.12,000/=. The Appellant had also not paid electricity which had accumulated to over Kshs.80,000/=. On 13<sup>th</sup> July, 2023, the Respondent issued a notice to terminate tenancy giving grounds thereof. The notice was served upon the Applicant on 15<sup>th</sup> July, 2023 and took effect on 15<sup>th</sup> September, 2023.

15. The notice which was issued complied with all the requirements of the Act as to the issuance, form, reasons and service. I therefore find that the notice was validly issued and complied with the requirements of the Act. The Appellant did not invoke the provisions of Section 6 of the Act with the result that the termination notice took effect.

16. The Appellant having failed to act in accordance with Section 6 of the Act she resorted to making a reference under Section 12 (4) of the Act which provides as follows:

**“In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit”.**

17. The Appellant had complained in the reference that the Respondent had closed the premises and disconnected the power. In the Respondent’s replying affidavit to the reference, he stated that he did not lock the premises. He stated that it is the Appellant who locked the premises and vanished and later alleged that her stock had been stolen. The Appellant’s allegations were investigated by the police who found the same to be untrue as her stock was intact.

18. On the allegation that the Respondent is the one who disconnected the power, it turned out that it was Kenya Power which had disconnected the electricity to the premises due to nonpayment of a bill which stood at Kshs.81,333.59.

19. The Appellant did not file any further affidavit to refute the Respondent's position as regards the alleged closure of the premises and disappearance of her stock in the premises. I therefore find that the Appellant's reference was properly dismissed.

20. In the notice of 21<sup>st</sup> September, 2023, the Appellant had sought the following orders:

**1. That the Landlord, its servants and/or employees, caretaker, agents is hereby restrained forthwith by this court from unlawfully increasing rent, intercepting/harassing, intimidating and/or evicting, closing or threatening/interfering/tampering, demolishing, disconnecting electricity power, disposing by and or in any manner whatsoever and/or howsoever with the Applicant quite occupation and lawful enjoyment of suit premises at Mbooni Tulimani- Kithome Market pending hearing of this case.**

**2. That OCS Kikima Police Station to assist in compliance of those orders.**

**3. That cost of application be provided for.**

21. The Appellant admitted to being in rent arrears of Kshs.4,000/= in her affidavit in support of the motion. The tribunal found that indeed she had not paid rent for July, August and September. The Appellant had not even paid rent for October and November, 2023 when ruling on her application was being made.

22. It is clear that there was an outstanding bill for electricity which stood at Kshs.81,333.59 and Kenya Power had sent a notification indicating that they had disconnected the electricity. The Respondent had not given any

indication of rent increase. After the termination notice took effect on 15<sup>th</sup> September, 2023, the Respondent engaged the Appellant in correspondence seeking vacant possession. There was therefore no evidence of any forceful eviction or harassment. The Respondent had no intention of demolishing or disposing of the premises. The Applicant's notice of motion dated 21<sup>st</sup> September, 2023 was properly dismissed.

23. From the above analysis, I find that the Appellant's appeal is devoid of merit. The same is dismissed with costs to the Respondent.

.....  
**HON. E. O. OBAGA**

**JUDGE**

**JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**IN THE PRESENCE OF:**

Mr. Musau for Respondent.

Court assistant - Deodata\_\_