REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL CASE NO. E021 OF 2023 (O.S)

GATAKAINI INVESTMENT LIMITED ……..……...PLAINTIFF

-VERSUS-

PRINCE KINYUA GATHUITA T/A

TALCOM COMMUNICATIONS ……DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against Defendant vide Plaint dated 8th May 2023 seeking following orders;
    1. **That the Defendant pays the requisite rent arrears as per the notice dated 28th February 2012 taking effect from 1st May 2012, the rent arrears as per notice dated 26th February 2013 taking effect on 1st May 2013, rent arrears as per notice dated 30th March 2015 taking effect on 1st June 2015 to 28th February 2023.**
    2. **That the Defendant pays two months' notice to vacate rent arrears and February 2023 rent totaling to Ksh 243,600.**

3. **That the Defendant be ordered to pay the unpaid electricity bill of Ksh.177,354.32**
4. **That the Defendant be ordered to pay for general repairs and painting costs of Ksh.1,150,000.**
5. **That the Defendant be ordered to pay the interest (court rate)**
6. **Any other order that the court deems fit.**

2. The Plaintiff pleaded that it is the landlord and registered proprietor of Plot No. 209/1476, Nairobi, while the Defendant was a tenant under a tenancy agreement dated 7th March 2009 for the basement of Gatakaini Building at a monthly rent of Ksh 81,200. After a period of four years, the Plaintiff states that it issued a duly executed and served on the Defendant notice on 28th February 2012 increasing the rent to Ksh 102,000 effective 1st May 2012, it is averred that the Defendant neither responded within the statutory 30 days nor filed a reference within the required period. That because the tribunal was not operational, the Plaintiff could not enforce the revised rent, causing continued loss.
3. The Plaintiff avers that to mitigate ongoing losses, it issued subsequent rent-increase notices; one on 26th February 2013 raising the monthly rent to Ksh 150,000 effective 1st May 2013. Another notice dated 30th March 2015 was also issued raising the rent now to Ksh 350,000 effective 1st June 2015. In response to these two notices, the Defendant eventually wrote a letter and filed BPRT

Reference No. 350 of 2015 within time, which remains pending. He also filed BPRT Case No. 1001 of 2018 seeking urgent electrical repairs within 24 hours, despite knowing the landlord's offices were closed for the Christmas holiday, which the Plaintiff believes was done dishonestly to unfairly shift repair costs.

4. The Plaintiff assert that it seeks the Court's intervention to hear and determine the BPRT Cases 350/2015, 501/2015 and 1001/2018, adopt the rent-increase notices, and award rent arrears and losses from the unpaid increments. The sums claimed include losses from the three notices amounting to over Ksh 19 million comprised rent arrears, unpaid electricity bills, and repair costs, plus interest and costs of the suit. The Plaintiff affirms that no other case concerning the same subject matter is pending.
5. The Defendant filed a defence dated 17th Nov 2023 denying the existence of a formal tenancy agreement, insisting that no such agreement was ever executed between the parties. He asserts that the tenancy was instead an implied and controlled one, falling under the category of a protected tenancy within the meaning of Cap. 301.
6. The Defendant contends that disagreements over rent prevented execution of any formal contract, and therefore denies the Plaintiff's claims regarding terms of the tenancy and the alleged rent increments.

7. He further states that he was never served with the rent-increase notices of 2012, but avers that the notices of 2013 & 2015 were subject to BPRT Case No. 501 of 2015, which was heard, determined, and dismissed on 23th February 2018. He contends that that this decision has never appealed, making the present suit *res judicata.*
8. The Defendant argues that the notices relied upon by the Plaintiff are legally defective, expired, and time-barred, and that the Plaintiff is guilty of laches for failing to prosecute its cases or appeal adverse rulings. He maintains that the Plaintiff's sustained delays, abandoned applications, and failure to follow directions issued by the Tribunal demonstrate indolence.
9. The Defendant emphasizes that the Tribunal has already considered all rent-increase notices and found, in its 2018 ruling, that the Plaintiff was estopped from relying on earlier increases after issuing a fresh notice in March 2015 acknowledging rent at Ksh 81,200, and that the Plaintiff's application was an abuse of process. The Defendant also reiterates that the only valid notice ever served upon him was the one dated 30th March 2015, which he opposed through BPRT Case No. 350 of 2015.
10. The Defendant outlines the full procedural history of the three Tribunal matters, BPRT 350/2015, 501/2015, and 1001/2018, stating that all were heard, determined, and concluded. He notes that BPRT 501/2015 was dismissed in 2018, BPRT

1001/2018 was determined in 2018 and 2019 with orders fully implemented and BPRT 350/2015 was marked as overtaken by events and closed on 27th March 2023 after the Defendant vacated the premises.

11. He argues that the Plaintiff repeatedly failed to comply with Tribunal directions, frustrated hearing dates, filed unnecessary applications, and delayed proceedings, leading the Tribunal to expressly criticize the Plaintiff's conduct and find its applications misconceived.

12. The Defendant further denies owing any of the special damages claimed by the Plaintiff, asserting that he paid all rent and utilities during his tenancy and was never subjected to distress for arrears. He contends that the Plaintiff's suit is an afterthought, incompetent, barred by limitation, and precluded by res judicata, given the Tribunal's conclusive rulings, thus this Court lacks jurisdiction over the matter. That he was entitled to vacate the premises upon fulfilling his obligations under the protected tenancy, and the present suit should be dismissed in its entirety.

13. The Plaintiff filed a response to the defence dated 27th November 2023 maintaining that a valid tenancy existed from 7th March 2009 to 28th February 2023, during which the Defendant occupied the suit premises, paid rent, and enjoyed full possession pursuant to the terms negotiated in 2009 whether or not he executed the written agreement. The Plaintiff asserts that all statutory rent-increase notices of

2012, 2013, and 2015 were properly obtained, filed, and served on the Defendant, with affidavits and Tribunal endorsements confirming service.

14. The Plaintiff argues that the Defendant failed to file references within the statutory timelines for the 2012 and 2013 notices, and that the 2015 notice was the only one contested (through BPRT 350/2015), alongside BPRT 501/2015 and 1001/2018, all of which were eventually closed after the Defendant vacated in February 2023.

15. The Plaintiff contends that the Defendant vacated while three disputes were still pending, leaving unresolved issues of rent arrears, increments, and compliance with notices. It asserts that the Tribunal closed the files solely because the tenancy had ended, not because the Plaintiff's claims had been adjudicated on merit, thereby extinguishing the Tribunal's jurisdiction and requiring fresh recourse in the High Court. The Plaintiff therefore seeks recovery of rent arrears, electricity charges, and other sums that it claims remained outstanding at the time the Defendant exited the premises.

Evidence

16. In support of Plaintiff's case, Martin Kang'ara Kimani, a secretary of its board testified as PW 1, adopted he undated statement filed ON 8th May, 2023 as evidence in chief and produced the documents in his list dated 8.5.2023 as PEx1-12. He confirmed that the tenancy agreement exhibited was not signed by the

defendant urging that his refusal to sign meant that he agreed to abide by what was agreed in the board. That pursuant to the agreement, the Defendant continued paying rent of Ksh.81,200 per month as per Clause 1 of the Agreement.

17. It is his evidence that the landlord issued notices of intentions to increase rent to the Defendant out of which the Defendant admits receipt of two of the notices. The notices required the defendant to pay the increased rent of 20% every two years but the Defendant failed to do so. That they were quoting rent of Ksh.81,200 per month because he refused to pay rent until he vacated from the premises.

18. He continued in testimony that previously, they had 3 cases before the Tribunal which were not heard to conclusion. That they were being given dates but most times, the Tribunal would be closed and when the Defendant ran away, the cases were closed. Thus, they are seeking that the Defendant be ordered to pay all the rent arrears and costs of this suit.

19. During cross examination, PW1 affirmed that they have not attached company resolution to file this case neither has he filed written authority permitting him to give evidence. He stated that the Notice of 2012 spoke of rent increase from Ksh.81,200 to Ksh.102,000, Notice of February 2012 increased rent from Ksh.81200 to Ksh.150,000 and for 30/3/2015, the rent increased from Ksh.81,200 to Ksh.350,000.

20. Reference to document at page 61 of the defendant's bundle refers to the dismissal of application in 501 of 2015 of which no appeal was filed and documents pages 62-71 which refers to application made 501/2015 seeking re-instatement. He admitted that the Defendant did not sign the agreement but was staying in the premises having verbally agreed to sign the tenancy agreement. That the notice of March 2015 was never prosecuted before the BPRT and confirms that it has been challenged in this case, 8 years after issuance.
21. He stated that the tenant was allowed to rectify the electricity and recover from the rent and he confirmed that he did not have a valuation report to support the increment from Ksh.81,200 to Ksh.350,000. He was shown electricity statement exhibited by the Defendant (page 165-166) of electricity arrears for 2021 of approximately Ksh.177,000 and as at March 2023, balance was Ksh.2316.
22. In re-examination, PW1 testified that BPRT closed their file because the Landlord/tenant relationship ended after the Defendant moved out. That the notices were referring to Ksh.81,200 because there was no time the Defendant increased the rent despite being served with notices. The Defendant never paid rents of Ksh.102,000 or Ksh.150,000. Also at page 61, the final orders dismissed the application dated 27/7/2015 and not the suit. Thus the notices were not dismissed but the Plaintiff did not get an opportunity to prosecute the matter in the Tribunal after the Defendant moved out.

23. The Defendant called two witnesses in support of his case, DW1 was Sylvester Ndungu, a valuer who prepared valuation report dated 24/4/2015 at pages 44-60. The witness referred to proceedings before BPRT where he confirms that he gave evidence and produced the same valuation report. He produced a copy of his degree certificate and registration certificate as DExh 1(a-b) and the valuation report as DExh2. DW 1 stated that he was instructed by Prince Kinyua to inspect premises on the basement, house no.2 owned by the Plaintiff and assessed the rent at Ksh.78,446.87 inclusive of VAT, using comparable of 3 other premises in the neighborhood of the subject property.

24. He noted that in his knowledge, land can appreciate or depreciate and the landlord would be entitled to a rent increment but in this case did not make room for increment because the going rents as per the comparables. That he valued the premises as shown by the client and also obtained a survey map. He added that at page 45 of his report is the rent per square feet of the lettable area, 2852 per Sq ft and stated that the sizes of the comparables were within the same range.

25. The Defendant testified as DW 2 and adopted his recorded statement dated 20/11/2023 as evidence in chief. He produced documents in the list dated 20/11/2025 as DExh 1-22. DW 1 asserts that the title pleaded in Par 3 of the plaint is not the land where a space was leased to him. That he was leased space on LR.209/136/249 and the electricity bill issued on 4/7/2011 showing the account

no.2 is 20766814 and amount due is Ksh.75036 is also not related to the premises he had leased Account No.1997154. He gave his electricity account number as 1997154 and is mentioned in the court order found at pages 84 and 105 of his bundle (Case No.1001 of 2018). He insists that the amount due on the said account was Ksh2318.

26. On cross examination, DW 2 stated that he only received second last notice increasing the rent from Ksh.81,200 to Ksh.150,000 and challenged the same before BPRT No.350 of 2015. That he also filed ref no.1001 of 2018 asking the landlord to repair the electricity boxes and which case was closed for lack of tenant/landlord relationship. He confirmed that he vacated the premises in January 2023, without issuing any notice but averred to have paid rent for that month. He added that the Tribunal had closed 2 of the three matters before he vacated the premises.

27. The defendant maintained that no valid tenancy agreement dated 7 March 2009 ever existed because it was never executed and no consensus on rent was reached. Hence an implied and protected tenancy under Cap. 301 governed their relationship. He asserts that only the 30th March 2015 notice was validly served and that he duly challenged it before the BPRT Case No. 350/2015, whereas the alleged 2012 and 2013 notices were never served and were already addressed in BPRT 501/2015.

28. According to him, all the Tribunal matters, BPRT 350/2015, 501/2015, and 1001/2018 were conclusively determined, including repair orders against the Plaintiff and a final finding on 27th March 2023 that said all the issues were overtaken by events after he vacated the premises.

Submissions

29. The Plaintiff and the Defendant filed submissions dated 9th September 2025 and 27th October 2025 respectively.

30. The Plaintiff submits that the Defendant was its tenant, despite a typographical error in the plot number on the plaint. Although the written tenancy agreement was unsigned, the parties' relationship constituted a controlled tenancy under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301. They submit the Plaintiff issued three rent-increase notices between 2012 and 2015, with the Defendant failing to respond to the first two and only objecting to the third. It is their argument that the Defendant did not file references for the first two notices within the statutory timelines hence these notices took effect by operation of law under section 10 of Cap 301.

31. The Plaintiff disputes the Defendant's argument that its claim is *res judicata* owing to three earlier Tribunal matters, BPRT Nos. 350/2015, 501/2015 and 1001/2018. They point out the fact that the Tribunal's ruling of 23rd February 2018 only

dismissed an interlocutory application in BPRT 501/2015, not the main suit. The Plaintiff further highlights Tribunal proceedings from 2021–2023 showing that all three files remained active, were later consolidated, and were only closed when the Defendant vacated the premises, divesting the Tribunal of jurisdiction.

32. Regarding rent arrears demanded, the Plaintiff maintains that the first two rent-increment notices took effect as the Defendant neither objected nor filed references, and evidence of service was supported by filed returns and Tribunal confirmation. The Plaintiff therefore seeks arrears calculated from the effective dates of the first two notices.

33. For the third notice, which the Defendant contested, the Plaintiff urges the Court to determine its enforceability, arguing that the Defendant's valuation report was flawed due to unreliable comparables and the absence of proof of ownership of the referenced properties. The Plaintiff asserts that rent increments were justified based on market appreciation and that arrears under the third notice are also payable.

34. Further, the Plaintiff argues that the Defendant unlawfully vacated the premises without issuing the statutory two-month notice required under Cap 301 for termination of a controlled tenancy. It submits that a controlled tenancy can only be terminated through a proper tenancy notice in prescribed form and since the Defendant did not comply with these requirements, it seeks payment of two

months' notice plus February 2023 rent, amounting to Kshs. 243,600, in addition to the rent arrears from the three notices.

35. On the other hand, the Defendant submits that the suit is *res judicata* under section 7 of the Civil Procedure Act because the issues raised were directly and substantially determined in BPRT Case Nos. 350/2015, 501/2015, and 1001/2018, all involving the same parties and the same subject matter. Relying on **Attorney General & Another v ET (2012) eKLR, Njanju v Wambugu (HCCC 2340/1991),** and **Uhuru Highway Development Ltd v CBK & Others,** the Defendant argues that parties cannot evade res judicata by re-litigating matters already decided or by giving them a "cosmetic facelift."

36. They further submit that Tribunal rulings dated 23rd February 2018, 18th December 2018, and 27th March 2023 were binding final orders issued by a court of competent jurisdiction, and since no appeal was filed as required under section 15(1) of Cap 301, the Plaintiff is improperly using this fresh suit as a backdoor appeal.

37. On the validity of the rent-increase notices, the Defendant argues that the notices dated 28th February 2012, 26th February 2013, and 30th March 2015 were already litigated and decided by the Tribunal, thus barring reconsideration by this Court. Citing **Ngoge v Kaparo & 5 Others (2012) KESC 7,** the Defendant contends that judicial hierarchy must be respected and that this Court cannot assume appellate

jurisdiction where the law expressly provides that appeals from the Tribunal lie to the Environment and Land Court.

38. Regarding the substantive claim, the Defendant submits that the Plaintiff has failed to prove rent arrears, electricity charges, repair costs, or the alleged two-month notice on the standard required for special damages. Citing **Hahn v Singh (1985) eKLR, Regional Kenya Ltd v Karanja (CA 534/2019),** and **Mugo v Nyaguthii (2023 KEHC 24186),** the Defendant argues that the Plaintiff presented no receipts, invoices, or credible evidence to support the claims.

39. Electricity records tendered by the Defendant remain uncontroverted, and the Plaintiff admitted that no demand was issued for the alleged arrears upon the Defendant's vacation. The Defendant therefore prays that the suit be dismissed with costs.

Analysis and Determination:

40. I have read the pleadings, considered the evidence and rival submissions by the Plaintiff and Defendant and below are the issues framed for determination:

    a. ***Whether this suit is barred by the doctrine of res judicata?***
    b. ***Whether a valid tenancy existed between the parties?***
    c. ***Whether the rent-increase notices of 2012, 2013, and 2015 were valid, served, and enforceable.***

d. Whether the Defendant is liable for rent arrears, electricity charges, repair costs, and two-months' notice.

a. Whether the suit is res judicata

41. The Defendant's position is that the issues raised herein were conclusively determined in BPRT Case Nos. 350/2015, 501/2015 and 1001/2018. Consequently, the Plaintiff, having failed to appeal the Tribunal's rulings, is barred from re-litigating the same matters. The Plaintiff contends the Tribunal never determined the disputes on merit and that the files were simply closed when the Defendant vacated the premises.

42. The Tribunal record produced by both parties shows that in BPRT 501/2015 an order was made on 23rd February 2018 dismissing the Plaintiff's application seeking to give effect to the previous notices (page 61 of defendant bundle). The Tribunal stated thus,

"The Tribunal is satisfied that the Landlord is estopped from denying that the monthly rent is Kshs 81200. The Tribunal has no doubt in its mind that the application dated 27th July 2015 is misconceived and an abuse of the court process. The Parties should proceed to fix the no 350 of 2015 for hearing."

43. BPRT 1001/2018 was determined with specific repair orders, which were implemented and BPRT 350/2015 was marked overtaken by events on 27th March 2023, after the Defendant vacated.

44. The question then arises, does these outcomes constitute "final decisions" on the issues now before this Court? The doctrine of *res judicata* in Kenyan law is embodied or anchored on **Section 7 of the Civil Procedure Act** as follows;

> **"7. Res judicata**
>
> **No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."**

45. The Court of Appeal in **John Florence Maritime Services Limited & another v Cabinet Secretary for Transport and Infrastructure & 3 others [2015] KECA 472 (KLR)** explained the said **Section 7** as follows;

> ***"….the ingredients of res judicata are firstly, that the issue in dispute in the former suit between the parties must be directly or substantially be in***

dispute between the parties in the suit where the doctrine is pleaded as a bar. Secondly, that the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title and lastly that the court or tribunal before which the former suit was litigated was competent and determined the suit finally. (see Karia & Another v the Attorney General and Others [2005] 1 EA 83."

46. It is my considered opinion that the ruling of the Tribunal in case no 501 of 2015 conclusively determined the issue of increment of rent from Kshs 81200 to Kshs 102000 and the notice increasing rent to Kshs 150000. The forum open to pursue rent arrears concerning the two impugned notices is by way of appeal and not filing of a fresh suit as he has done.

47. The closure of the consolidated files after the Defendant's exit was expressly due to loss of landlord-tenant relationship and not because the Tribunal had adjudicated the notice in case no. 350 of 2015. The judgment found annexed by the Defendant is inconclusive as it made orders for recalling of witnesses and not orders on the reference. On this basis, it is my view that not all issues presently before the Court were conclusively determined, and the suit is therefore not *res judicata* in in regard to the notice increasing rent from Kshs 81200 to Kshs 350000.

b. Whether a valid tenancy existed

48. It is undisputed that the tenancy agreement dated 7th March 2009 was never signed by the Defendant. Nonetheless, both parties agree that the Defendant took possession, paid rent monthly, and occupied the premises until February 2023. Whether or not the document was executed, the relationship created an oral tenancy, which is a controlled tenancy within the meaning of **Section 2** of **Landlord and Tenant (Shops, Hotels and Catering Establishments) Cap 301,** being a month-to-month arrangement where rent was payable monthly and no signed lease for more than five years existed.

49. PW1 confirmed that rent of Ksh 81,200 was consistently paid on this basis. It is therefore evident that, despite there being no written tenancy agreement, a valid controlled oral tenancy existed between the parties.

c. Validity and enforceability of the rent-increment notices

50. The Plaintiff asserts that three notices were validly issued and served in 2012, 2013, and 2015 respectively. The Defendant maintains he only received the last notice and denied service of the earlier two. The Plaintiff tendered copies of the impugned notices bearing the Tribunal's endorsements but no affidavits of service or evidence linking the Defendant personally to the alleged service dates.

51. Service of notice on the tenant is mandatory under **Section 4(2-3)** of **Cap 301** which states as follows;

"(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.

(3)A tenant who wishes to obtain a reassessment of the rent of a controlled tenancy or the alteration of any term or condition in, or of any right or service enjoyed by him under, such a tenancy, shall give notice in that behalf to the landlord in the prescribed form."

52. In this case, whether or not the service is disputed, I have noted from the ruling of the Tribunal that the two notices whose service is denied was already determined when the Tribunal held the Plaintiff was estopped from denying the monthly rent as at the date of their application (27.7.2015) was Kshs 81200.

53. With regard to the third notice, the Defendant admitted receipt and filed a reference at the Tribunal (BPRT) vide case No. 350/2015 within the statutory period challenging the same. That notice therefore never took effect as per the law, as it was actively contested. It could only take effect after determination of the reference, which never occurred. This is in line with section 6(1) of Cap 301.

54. Section 6(1) of Cap 301 states thus;

"A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4 (5) of this Act that he does not

agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, <u>whereupon such notice shall be of no effect until, and subject</u>(<u>to, the determination of the reference by the Tribunal”</u> (underline mine for emphasis).

e. Reliefs for rent arrears, electricity, repairs, and notice

55. The matter which was pending before the Tribunal in case No. 350 of 2018 before the Defendant vacated touched on matters rent and not vacant possession. Therefore, the Tribunal ought to have proceeded to determine it. The fact that the Tribunal closed its file does not in my considered view confer jurisdiction on this court to assess rent. The plaintiff ought to have challenged the order closing the files.

56. The landlord-tenant relationship is contractual. The Plaintiff admits that, despite the parties not having a signed tenancy agreement, they had a mutual agreement on a monthly rent of Kshs. 81,200 for the leased premises. For that rent to be increased, it ought to be by the consent of the parties or by an order of the Business Rent Premises Tribunal, in exercise of its statutory mandate.

57. It is only after the plaintiff obtains such consent/order that this court can be moved for recovery of the rent arrears. However, in this instance, where the notices did

not take effect and the parties did not reach consent on the amount payable, granting an order for recovery of the arrears premised on the disputed increment is equivalent to rewriting contracts between the parties.

58. The law is clear that he who alleges must proof. **Section 107** of **Evidence Act** defines the burden of proof. **Section 109** of the **Evidence Act** exemplifies the rule in **Section 107** on proof of a particular fact. It is to the effect that, the burden of proof as to any particular fact, lies on the person who wishes to rely on its existence. Whoever has the obligation to convince the court is the person said to bear the burden of proof. Thus, if one does not discharge that burden, then he will not succeed in as far as that fact is concerned. Consistent with **Hahn v Singh (1985) Eklr**, special damages must be specifically pleaded and strictly proved. The Plaintiff failed to do so.

59. The Plaintiff claimed that the Defendant had left outstanding electricity bill of Kshs.177,354.32 but produced no bill, receipt, or account statement. The Defendant, on the other hand, produced the relevant account (No.1997154) showing a final balance owing of Ksh 2,316 as at February 2023. PW1 conceded the discrepancy in account quoted. The Plaintiff therefore failed to prove this head of claim. Similarly, on the claim for repairs and painting costing of Ksh 1,150,000, the Plaintiff did not produce any valuation report, invoice, quotation, or professional assessment to support the claim.

60. Further, the Plaintiff argues that the Defendant vacated without issuing the statutory notice required for termination of a controlled tenancy. However, Cap 301 contemplates that notices are issued for termination, not for vacation where the landlord has already filed multiple notices and ongoing proceedings exists. It is trite law that since the Landlord is expected to issue a termination notice despite issuing an increment notice or having litigation pending, it is also expected that the tenant should issue such a notice. Hence, the claim for notice against the Defendant should pass.

61. Section 4(4) of Cap 301 provides the notice period thus;

> **"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."**

62. The Defendant conceded that he vacated the premises without serving any notice. Therefore, he ought to have paid two months' rent in lieu of notice. Under prayer 2 of the plaint, award the plaintiff a sum of Kshs.162,400 in lieu of notice of termination/vacant possession.

63. In conclusion, the Plaintiff's claim under paragraphs 1, 3, 4 of the reliefs sought is dismissed for want of merit. As already stated, prayer 2 is awarded at Kshs.162,400 with interest at court rates from date of filing this claim until

payment is made in full. The Defendant is granted 45 days to pay the sum awarded.

In default, the Plaintiff is at liberty to execute.

64. On costs, only a small limb of the claim has succeeded. Therefore, I order each party to bear their respective costs of the suit.

Dated, Signed and Delivered at Nairobi this 18th Day of December, 2025.

A. OMOLLO
JUDGE