



Kleen Homes Security Services Ltd v Pet Care Services Limited (Tribunal Case E550 & E360 of 2025 (Consolidated)) [2025] KEBPRT 423 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEBPRT 423 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E550 & E360 OF 2025 (CONSOLIDATED)
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
OCTOBER 9, 2025**

BETWEEN

KLEEN HOMES SECURITY SERVICES LTD APPLICANT

AND

PET CARE SERVICES LIMITED RESPONDENT

RULING

A. Background

1. The Respondent/Landlord filed a Notice of Preliminary Objection dated 18th August 2025 seeking to strike out the consolidated references in BPRT E360 of 2025 and BPRT E550 of 2025, contending that the tenancies between the parties are not controlled tenancies within the meaning of Section 2 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) (Cap 301, Laws of Kenya).
2. The Landlord's objection is anchored on two main grounds: that the lease agreements are for terms exceeding five years and therefore outside the purview of controlled tenancies, and that the Tribunal therefore lacks jurisdiction to hear and determine the dispute.
3. The Tenant/Applicant opposed the objection through submissions dated 5th September 2025, arguing that the leases in question contain termination clauses capable of invocation by either party before the expiry of five years, and are therefore controlled tenancies under Section 2(1)(b)(ii) of Cap 301.

B. Issues for Determination

4. The issues for determination are as follows:
 - i. Whether the Preliminary Objection meets the established legal threshold.



- ii. Whether the tenancies between the parties qualify as controlled tenancies under Section 2 of Cap 301 so as to confer jurisdiction on this Tribunal.
- iii. Who is liable to pay costs of the objection?

C. Analysis and Determination

i. Whether the Preliminary Objection Meets the legal threshold

5. In the celebrated case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, Law J.A. stated:

“A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.”
6. Similarly, in *Oraro v Mbaja* [2005] eKLR, Ojwang J. (as he then was) emphasized that:

“A preliminary objection cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
7. In the present matter, the Landlord’s objection is premised on the assertion that the leases are for terms exceeding five years and are therefore, not controlled. However, the existence and interpretation of termination clauses within the leases are contested factual issues requiring the Tribunal to examine the actual lease documents, their wording, and the intention of the parties.
8. Such examination takes the objection beyond the realm of pure law into factual inquiry, contrary to the principles laid down in *Mukisa Biscuit* and *Oraro v Mbaja*. Therefore, the objection does not qualify as a pure point of law capable of disposing of the suit in limine.

ii Whether the Leases Create Controlled Tenancies Under Section 2 of Cap 301

9. Section 2(1)(b)(ii) of Cap 301 defines a controlled tenancy as one which inter-alia:

“... has been reduced into writing and which contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof.”
10. The Tenant has demonstrated through annexed copies of the leases that each of them contains a termination clause permitting either party to terminate the tenancy by notice before the expiry of five years.
11. The Court of Appeal in *Khalif Jele Mohamed & another v Republic* [2019] eKLR held that:

“If such a tenancy has provision for termination, which can be invoked at any time during the term, it is a controlled tenancy under Section 2(1)(b)(ii) of Cap 301.”
12. Likewise, in *Githiomi v Maina* [2025] KECA 175, the Court observed that: “Although the lease was for a period exceeding five years, the presence of a termination clause capable of invocation by either party within the first five years rendered it a controlled tenancy within the meaning of Section 2 of Cap 301.”



13. This reasoning has also been consistently followed by the Tribunal, as in *Salat v Nnicom Investment Co. Ltd* (BPRT E1026/2022), where it was held that:

“A tenancy agreement that contains a mutual termination clause permitting termination otherwise than for breach and within five years from commencement is a controlled tenancy under Section 2(1)(b)(ii).”

14. The Tribunal finds that the leases herein fall squarely within this principle. The existence of mutual termination provisions brings the tenancies within the statutory definition of controlled tenancies, thereby conferring jurisdiction on this Tribunal to entertain the dispute.
15. The Landlord relied heavily on *Kenya Commercial Bank Ltd v Popatlal Madhavji & Bros.* [2019] eKLR, *Nilerch Investment Co. v Ontulili Investment Ltd* (BPRT E1119/2023), and *Omega Fire Ministries Int'l v Paragon Property Consultants Ltd* (BPRT E1044/2024) to argue that the leases herein are not controlled.
16. These authorities are, however, distinguishable. In *Popatlal* (supra), the lease did not contain any termination clause. Similarly, in *Nilerch* and *Omega Fire Ministries*, the Tribunal found that the user of the premises was not a shop, hotel, or catering establishment, and that the leases lacked early termination provisions.
17. In contrast, the present leases relate to business premises used for the Tenant's security services and training business, which falls within the commercial category contemplated by Cap 301, and contain express mutual termination clauses exercisable otherwise than for breach and within five years.
18. The distinguishing feature in the cited cases is therefore the absence of a termination clause, which is precisely the element that brings the present tenancy within the ambit of Cap 301.

iii On Jurisdiction

19. The Landlord's argument that the Tribunal lacks jurisdiction is untenable once it is established that the tenancies are controlled within the meaning of Section 2. The Tribunal's jurisdiction under Section 12(1) of Cap 301 extends to all controlled tenancies, and once such a tenancy is shown to exist, this Tribunal must exercise its statutory mandate.
20. The invocation of *The Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1 on the doctrine of jurisdiction is therefore misplaced, as the factual foundation of jurisdiction under Cap 301 has been properly demonstrated.

iv. Costs

21. Section 12(1)(k) of Cap 301 expressly empowers this Tribunal to award costs as it deems fit. The provision states that the Tribunal may “award costs as it deems fit in any proceedings before it.”
22. In exercise of this discretion, the Tribunal is guided by the general principle that costs follow the event unless the circumstances dictate otherwise. Having found the Preliminary Objection unmerited, the costs shall follow the event.

D. Final Orders

23. In the result, the Tribunal finds and holds as follows:



- a. The Preliminary Objection dated 18th August 2025 does not meet the threshold of a pure point of law.
- b. The leases between the parties contain termination clauses exercisable within five years, thereby qualifying as controlled tenancies under Section 2(1)(b)(ii) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) (Cap 301).
- c. The Tribunal consequently has jurisdiction to hear and determine the consolidated matters.
- d. The Preliminary Objection is hereby dismissed with costs to the Tenant/Applicant.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9TH DAY OF OCTOBER 2025.

HON. GAKUHI CHEGE - (PANEL CHAIRPERSON)

HON. JOYCE AKINYI OSODO - (PANEL MEMBER)

BUSINESS PREMISES RENT TRIBUNAL

In the presence of:-

Kemboi h/b for Waceke for Tenant

Karanja for Landlord

