



**Dawn to Glow International Limited v Tradeline Express Limited; Pyramid Auctioneers
(Auctioneer) (Tribunal Case E939 of 2023) [2024] KEBPRT 994 (KLR) (10 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 994 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E939 OF 2023
P MAY, MEMBER
JULY 10, 2024**

BETWEEN

DAWN TO GLOW INTERNATIONAL LIMITED TENANT

AND

TRADELINE EXPRESS LIMITED LANDLORD

AND

PYRAMID AUCTIONEERS AUCTIONEER

RULING

1. The present proceedings were commenced by the tenant through the reference and plaint dated 26th September, 2023. The tenant primarily prayed for an order of permanent injunction against the landlord and their agents from interfering with their quiet and peaceful possession of the demised premises. Contemporaneous with the reference, the tenant filed an application on an even date seeking for interim orders to maintain their interests in the demised premises pending the hearing and determination of the Reference.
2. The Application was placed before the Tribunal on 29th September, 2023 whereby the Tribunal issued interim orders in favour of the tenant pending the inter partes hearing. The respondents upon being served duly entered appearance and filed their response through the notice of preliminary objection dated 10th October, 2023. The respondents challenged the jurisdiction of the Tribunal stating that the tenant was not a protected tenant hence the Tribunal was bereft of jurisdiction and the present proceedings a waste of time.
3. It is trite law that once the jurisdiction of the Tribunal is challenged, the Tribunal has to dispense with the same before it can delve into the substantive dispute. The parties herein elected to canvass the preliminary objection by way of written submissions. At the time of writing this ruling, the tenant had not filed their submissions but nonetheless I will proceed to assess the merits of the said objection.



4. In the locus classicus of; Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd. (1989), in the subject of jurisdiction, the Court pronounced itself as follows:

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

5. Further, in the case of; Joseph Muthee Kamau & Another v. David Mwangi Gichure & Another (2013) eKLR, the Court considered the issue of jurisdiction and stated as follows:

“When a suit has been filed in a court without jurisdiction, it is a nullity. Many cases have established that; the most famous being Kagenyi v. Musirambo (1968) EA 43. We hold that jurisdiction cannot be conferred at the time of delivery of judgment. Jurisdiction does not operate retroactively. Jurisdiction must exist at the time of filing suit or latest at the commencement of hearing.”

6. Section 2 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) provides as follows:

For the purposes of this Act, unless the context otherwise requires—

“catering establishment” means any premises on which is carried out the business of supplying food or drink for consumption on such premises, by persons other than those who reside and are boarded on such premises;

“Controlled tenancy” means a tenancy of a shop, hotel or catering establishment—

- a. which has not been reduced into writing; or
- b. which has been reduced into writing and which—
 - i. is for a period not exceeding five years; or
 - ii. contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
 - iii. relates to premises of a class specified under subsection (2) of this section:

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;

7. Based on the above provision, it is very clear that for the Tribunal to have Jurisdiction, if the Lease Agreement between parties is written the same must not exceed five years and if it does, it should contain a provision relating to Termination otherwise than for breach of covenant.
8. I have perused through the letter of adduced by the tenant. The same was reduced into writing and the specified term was five years and three months. The period obviously exceeds the five years stipulated under CAP 301. The agreement does not have any termination clause thus the tenant cannot claim that the same could be terminated as envisaged under CAP 301. The preliminary objection therefore succeeds.



9. In the end, the Respondents' preliminary objection dated 10th October, 2023 is allowed with costs awarded to the respondent assessed at Kshs. 25,000/=.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 10TH DAY OF JULY, 2024

HON. PATRICIA MAY - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Nyamagwa for the Landlord and in the absence of the Tenant

