



**Get Electronics 24 Africa Ltd v Pioneer Holdings (Africa) Ltd & another (Tribunal Case E457 of 2023) [2023] KEBPRT 1198 (KLR) (19 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1198 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E457 OF 2023  
P MAY, MEMBER  
SEPTEMBER 19, 2023**

**BETWEEN**

**GET ELECTRONICS 24 AFRICA LTD ..... APPLICANT**

**AND**

**PIONEER HOLDINGS (AFRICA) LTD ..... 1<sup>ST</sup> RESPONDENT**

**ICON AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling will determine the tenant's notice of motion filed under certificate dated 5<sup>th</sup> May, 2023. The tenant filed the application challenging the actions of the landlord of commencing the process of levying distress.
2. The application was premised on the grounds set out on the face of it and the further grounds enumerated in the Supporting affidavit.
3. The tenant contended that he had occupied the demised premises and had been paying rent as when it fell due thus had not fallen into any arrears as alluded to by the landlord.
4. The tenant stated that the landlord's actions of trying to evict them while they had paid their rent was illegal and contravened the provisions of CAP 301.
5. The tenant therefore urged the Tribunal to allow the application as drawn.
6. The application was opposed by the landlord vide the Replying affidavit sworn by its legal officer on 18<sup>th</sup> May, 2023. The response took a multi-pronged approach in attacking the application.
7. First the landlord challenged the jurisdiction of the Tribunal to deal with the present dispute as the tenancy was for a period of 6 years.



8. The landlord stated that the tenant had misled the Tribunal that it did not have any outstanding rent arrears while in reality they had accumulated rent arrears hence the proclamation was done within the purview of the law.
9. The parties elected to canvass the application by way of written submissions. There has been compliance by both parties and I shall proceed as follows:

### **Jurisdiction**

10. The jurisdiction of the Honourable Tribunal is disputed.
11. The Landlord's contention is that the tenancy relationship between the parties herein is governed by a lease agreement in writing for a period of 6 years. That this lease period places the tenancy herein outside the jurisdiction of the Tribunal as it exceeds the five years period/term provided for under section 2(a) (1) of Cap 301 of the Laws of Kenya.
12. On their part, the Tenant has not disputed the tenancy period neither did they address the question of jurisdiction in their submissions.
13. This Tribunal only has jurisdiction over disputes emanating from controlled tenancies. Controlled tenancy is defined under section 2 of Cap 301 as;

“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 of
  - 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.”
14. I am in agreement with the submissions by the landlord that in view of the lease period of six years and the lack of a termination clause otherwise than for a breach of covenant, this Tribunal clearly has no jurisdiction to hear and determine this matter.
15. Section 12(4) of Cap 301 provides as follows;

“In addition to any other powers specifically conferred on it by us 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 orders thereon as it deems fit.
16. The jurisdiction of the Tribunal as stated above is clearly limited to controlled tenancies as provided under section 12(4) above and as defined under section 2(1) of Cap 301. The lease agreement between the parties herein is for a period of six years. I have gone through the same and it does not contain a termination clause otherwise than for breach of covenant within five years from the commencement thereof. The lease agreement does therefore not give rise to a controlled tenancy between the parties in the premises of which this Tribunal lacks the requisite jurisdiction to hear and determine the dispute between the parties.



17. Consequently, the Tenant's reference dated 5<sup>th</sup> May, 2023 and notice of motion dated an even date are hereby dismissed with costs to the Landlord assessed at Kshs. 50,000.
18. For avoidance of doubt, any orders issued in this matter are hereby discharged.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2023**

**HON. P. MAY**

**MEMBER**

**19.9.2023**

