



**Joseph Irungu t/a Velmac Furnitures v Maina Githinji t/a Innovative Woodcuts & another  
(Tribunal Case E225 of 2024) [2024] KEBPRT 1005 (KLR) (12 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1005 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E225 OF 2024  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
JULY 12, 2024**

**BETWEEN**

**JOSEPH IRUNGU T/A VELMAC FURNITURES ..... APPLICANT**

**AND**

**MAINA GITHINJI T/A INNOVATIVE WOODCUTS ..... 1<sup>ST</sup> RESPONDENT**

**GARTH DAY YEAR AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This Ruling is on the preliminary objection dated 14<sup>th</sup> March 2024. The same was filed by the Respondents and was on the following grounds:-
  - i. The premises is not a controlled tenancy.
  - ii. The plaint dated 16<sup>th</sup> February 2024 is incurably defective as all proceedings under the business premises tribunals are by way of a reference.
  - iii. That the 1<sup>st</sup> Defendant has not served the plaintiff with a reference for the termination of or alteration of the terms and conditions.
  - iv. That the suit should be dismissed with costs.
2. In his response, the Tenant asserted that the dispute herein was a controlled as it arose within 5 years of execution of the lease. He also claimed that filing the dispute by way of a plaint was a procedural error curable under Article 159 (2) (d) of *the Constitution*. The Tenant also claimed that the landlord abused due process in the attachment of his goods.
3. We have perused all the pleadings on record by both parties and also their respective submissions. We also have had the advantage to move through the case laws as cited. In all, it is our considered view that this matter will be resolved by answer to the question whether lease agreement between parties gave



rise to a controlled tenancy as envisaged under Section 2(1) of the Landlord and Tenant (Act) (Cap. 301) hereinafter “the Act”.

4. The lease agreement in defining the length of the parties engagement provided that:-

“The term of this lease is for a period of sixty three months, commencing on the 1<sup>st</sup> September 2019”.

5. From plain reading of the said Clause, it speaks to the plain reality that the term of the lease was for five (5) years and three months. We have keenly looked at the lease agreement herein and appreciate that there does not exist a break and/or drop clause. In effect, this tribunal does not have the jurisdiction to preside over the matters herein.

6. That jurisdiction was denied from this court by the said lease agreement entered into voluntarily, consciously and freely by the parties. Without jurisdiction, this court would have no other legitimacy to take any one step more in these proceedings.

7. Section 2(1) of the Act provides that:-

“A controlled tenancy means a tenancy of shop, hotel and catering establishment:-

a. Which has not been reduced into writing and which:-

i. Is for a period not exceeding five years, or

ii. Contains provision for termination, otherwise than breach of covenant, within five years from the commencement thereof”.

8. The lease agreement herein was in writing and is for a period exceeding 5 years thus ousting the jurisdiction of this court. In the vessel “Lillians S” – vs- Caltex Keya Ltd (1989) eKLR the court held that:-

“Jurisdiction is everything without it a court has no power to move one more step.

9. In the Westlands of Bachelor’s Bakery Ltd – vs- Westlands Securities Ltd (1982) eKLR the court on the question of jurisdiction held that:-

“If the Agreement confers the right to obtain a lease thereunder for a period exceeding five years, it is an uncontrolled tenancy and outside the ambit of the Act (Landlord’s and Tenants, shops, Hotels and Catering Establishments) Act Cap. 301 which then loses jurisdiction over it”.

10. In the final analysis, the orders that commend to s are the following:-

i. That the notice of preliminary objection dated 14<sup>th</sup> March 2024 is upheld.

ii. That the Tenants suit is accordingly struck out and with it all the interim orders on record.

iii. That the Tenant shall pay the costs of these proceedings assessed at Kshs.50,000/-.

Those are the orders of the court.

**RULING SIGNED, AND DELIVERED VIRTUALLY AT NAIROBI THIS 12<sup>TH</sup> DAY OF JULY, 2024.**

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI**



**PANEL CHAIRPERSON MEMBER**

BUSINESS PREMISES RENT TRIBUNAL BPRT

Ruling delivered in the presence of Mr. Kuria for the Tenant/applicant and in the absence of Mr. Okulo for the Landlord/Respondent.

**HON. NDEGWA WAHOME, MBS HON. JOYCE MURIGI**

**PANEL CHAIRPERSON MEMBER**

BUSINESS PREMISES RENT TRIBUNAL BPRT

