



Kombo t/a Antique Electronics v Muiru & another (Tribunal Case E445 of 2023) [2023] KEBPRT 1172 (KLR) (18 August 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1172 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E445 OF 2023
CN MUGAMBI, CHAIR
AUGUST 18, 2023**

BETWEEN

KASSIM SHABAN KOMBO T/A ANTIQUE ELECTRONICS TENANT

AND

JOSEPH MUIRU LANDLORD

AND

TERET INVESTMENTS AGENT

RULING

1. The Respondents' notice of preliminary objection dated 16.5.2023 has been brought on the grounds;-
“that the tenant/Applicant is not a protected tenant within the provisions of Cap 301 since the tenancy between the Applicant and the Respondent is a lease of five years and three months.”
2. The only issue to determine in the objection is really whether the lease agreement between the parties creates a controlled tenancy between them and therefore whether this Tribunal has the requisite jurisdiction to hear and determine this matter.
3. The Respondent's submissions is that the lease agreement between the parties is for a period of five years and three months and has no provision for termination otherwise than for breach of covenant within five years from the commencement thereof, which effectively puts the tenancy beyond the jurisdiction of the Tribunal.



4. In response, the tenant has submitted that clause 5(11) of the lease agreement has provision for termination where the said clause provides as follows:-

“...if the buildings and improvements are not reinstated in habitable condition within three months, the lessee shall have the option to terminate the lease on giving three months’ notice of his intention to do so...”

5. I have perused the lease agreement and clause 2 thereof provides for the lease period of five years and three months.

I have also read clause 5(11) of the lease agreement and in my view, clause 5 of the said lease agreement contains further covenants between the parties. It is out of the breach of the covenants set out therein that the tenant would be entitled to terminate the tenancy by giving to the landlord a three months’ notice of the intention to so terminate. Clause 5(11) is therefore Not a provision for termination Otherwise than for breach of covenant.

Does the lease then give rise to a controlled tenancy? Section 2 of Cap 301 describes a controlled tenancy as 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 date of commencement thereof, or
 - iii. Relates to premises of a class specified under subsection (2) of this section.
6. The lease agreement between the parties herein does not satisfy the description of a controlled tenancy as above described. The lease is for a period beyond the five years set out under the Act and I have further found that the lease agreement does not make provision for termination otherwise than for breach of covenant within five years from the date of commencement thereof.
7. Consequently, I do find that the Tribunal has no jurisdiction to hear and determine this matter. I allow the notice of preliminary objection by the Respondents and further dismiss the complaint and application by the tenant with costs to the Respondents assessed at Kshs. 30,000/=.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF AUGUST 2023.

HON. CYPRIAN MUGAMBI - CHAIRPERSON

8.2023

Delivered in the presence of;

Ms. Mburugu for Mr. Kinyua for the landlord

Mr. Kagunza for the tenant

