



**Ogamba & another v Reheman & another (Tribunal Case E318 of 2024)
[2024] KEBPRT 1430 (KLR) (23 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1430 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E318 OF 2024
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
SEPTEMBER 23, 2024**

BETWEEN

MICHAEL OGAMBA APPLICANT

AND

MICHAEL OGAMBA TENANT

AND

SHARIFA ABDUL REHEMAN RESPONDENT

AND

SHARIFA ABDUL REHEMAN LANDLORD

RULING

1. This Ruling is on the Tenant/Applicant's notice of motion Application dated 18.6.2024. the same sought for the following reliefs:-
 - i. Spent
 - ii. That pending the hearing of this Application, this Tribunal be pleased to stay the orders issued on the 14.12.2023 and 7.05.2024 respectively.
 - iii. That the Honourable court review, vary or set aside the said orders for lack of jurisdiction.
 - iv. That the costs of this Application be provided for.
2. The only ground by the Tenant in his challenge of the orders of this court is that it had no jurisdiction to preside over this matter as conferred to it under Section 2(1) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap 301) hereinafter "the Act."



3. The Tenant's contention is that the tenancy agreement between the parties dated 30.1.2022 and marked "MO1" is for a term of five (5) years and three (3) months and therefore outside the jurisdiction of this court.
4. To the Tenant, the orders of this court made on the 14.12.2023 and 7.5.2024 were in vain for want of jurisdiction and required to be set aside. The Tenant also filed the submissions dated 26.8.2024 and which run the same thread.
5. On her part, the Landlord filed the Replying affidavit sworn on the 18.7.2024. She asserted that jurisdiction had been admitted by the parties in the course of the entire proceedings and determination thereof. To her, this court was functus officio on the issues before it. It was her further contention that if indeed this court had no jurisdiction in the first place, it could not therefore also preside over the present Application. The Landlord offered not to render any submissions and left it to this court to deliver a Ruling on the Tenant's Application dated 18.6.2024.
6. Having perused the Tenant's and Landlord's pleadings, it is in our view that the issues for determination in this matter are the following:-
 - a. Whether the Tenant's Application dated 18.6.2024 has merit.
 - b. Who should bear the costs of the suit.
7. Before we address the identified issues at hand, it is important to note that this court never issued any orders on the 14.12.2023. The only orders issued close to that date are those issued on the 18.12.2023. Those orders were in favour of the Tenant and we doubt that he would want them vacated, varied and/or set aside. If that would be the case, then the same would defeat any essence of the Application before us.
8. On the other hand, the orders made on the 7.05.2024 were to the effect that:-
 - i. That the Tenant's claim and notice of motion both dated 30.11.2023 are dismissed.
 - ii. The landlord is at liberty to levy distress in recovery of all rents and mesne profits due to her until the date that the Tenant delivers vacant possession thereof or is evicted with the assistance of the OCS Nyali police station.
 - iii. That the Tenant shall pay costs assessed at Kshs. 30,000/=.
9. Going back to the Application before us, we are being persuaded to find that we had no jurisdiction to make the orders herein and therefore reverse the same. We decline the invitation to make that declaration for the reasons that this court has already rendered itself conclusively on all the issues that were for determination thereof.
10. In our view, the Tenant's Application herein belongs to the province of the Appellate jurisdiction of the Environment & Land Court, pursuant to Section 15 of the Act. In any event, we are not persuaded that this court did not have jurisdiction to make the orders that it made on the 18.12.2023 and 7.05.2024.
11. The Tenant asserts that the jurisdiction of this court is donated by Section 2(1) of the Act. The same is in the following terms:-

"Controlled tenancy" means a tenancy of a shop, hotel or catering establishment-

 - a. Which has been reduced into writing; or
 - b. Is for a period not exceeding five (5) years; or



- (ii) contains provision for termination, otherwise than for breach of covenant, within five (5) years from the commencement thereof.”

12. We do associate with the Tenant’s in this limb of submissions. The only challenge is that the tenancy agreement dated 30.1.2021 between the Tenant and the Landlady falls squarely within the prescription of Section 2(1)(b) (ii) and thus a controlled tenancy.

13. Clause 4(b) of the Tenancy Agreement between the parties and dated 30.1.2021 provides that:-

“ Any party giving three (3) months’ notice in writing can terminate the Tenancy.”

14. This is an open cheque that has afforded the parties an opportunity to terminate the tenancy with optimum freedom and without any conditions attached and therefore any dispute arising therefrom is for arbitration before this court in exclusion of all other courts except on a possible appeal.

15. The court of Appeal has eloquently spoken to this subject matter in the case of; Khalif Jele Mohamed & Another vs The Republic & Another [2019] eKLR where it held that;

“In the present case, the termination clause was a blanket provision that gave liberty to the parties to terminate at any time and for any reason within the 6 years term of the tenancy. In effect, it could be invoked by either party and either party could terminate the tenancy within the first 5 years of the term or even 5 years after the commencement of the tenancy.

In effect, as worded, the termination clause did not exclude termination of the tenancy within 5 years of the term. It was infact permissive of termination within 5 years from the commencement of the tenancy. To that extent, we are satisfied that the termination as worded brought the tenancy within the meaning of a controlled tenancy under Section 2 (1)(b)(ii) of the Act. Consequently, the Tribunal was clothed with jurisdiction over the matter.”

16. It follows then that, the orders of this court made on the 18.12.2023 and 7.05.2024 were within its jurisdiction and powers and therefore legitimate and cannot be faulted. We would therefore proceed to dismiss the Application dated 18.6.2024.

B: Who should bear the costs of the Application.

17. It is trite law that costs follow the event. We have no reason to depart from the conventional wisdom of Section 27 of the Civil Procedure Act and the proviso thereof. We therefore proceed and award costs to the successful party who is the Landlord.

18. In conclusion, the orders that commend to us are the following:-

- a. That the Tenant’s Application dated 18.6.2024 is dismissed.
- b. That the Landlady is awarded costs assessed at Kshs. 20,000/=.

Those are the orders of the court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2024.

HON. NDEGWA WAHOME, MBS - PANEL CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL



AND

HON. JOYCE MURIGI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of Mr. Iddi for the Landlord/Respondent and Mr. Onsumo holding brief for Mr. Nyakundi for the Tenant/Applicant

Court: The parties to be supplied with a certified copy of the Ruling on payment of the requisite court fees.

