



**Jackline Oyugo t/a Jaytee Executive Barbers and Salon v Tuffsteel Limited (Tribunal Case E941 of 2023) [2023] KEBPRT 1157 (KLR) (8 December 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1157 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E941 OF 2023  
CN MUGAMBI, CHAIR  
DECEMBER 8, 2023**

**BETWEEN**

**JACKLINE OYUGO T/A JAYTEE EXECUTIVE BARBERS AND  
SALON ..... TENANT**

**AND**

**TUFFSTEEL LIMITED ..... LANDLORD**

**RULING**

**Introduction**

1. The Landlord's notice of preliminary objection dated 9.10.2023 is brought on the grounds;-
  - a. That the tenancy for shop Nos. F10, F13 and F14 at Imara Mall erected on L.R. No. 209/22595 were all reduced into writing and therefore do not fall within the definition of controlled tenancies under Section 2(1)(a) of Cap 301.
  - b. That the terms of the tenancy aforesaid was for a period of five years and six months and therefore does not fall within the definition of controlled tenancies as set out under Section 2(1)(b) (II) of Cap 301.
  - c. That the tenancy agreements do not contain a clause for termination within five years from the commencement of the tenancy and therefore do not fall within the definition of controlled tenancies.
  - d. That there was no Tenant/Landlord relationship capable of being protected as at the time of filing this suit and therefore Cap 301 is inapplicable in the circumstances. The landlord duly exercised its right of re-entry of the suit premises on 26<sup>th</sup> September 2023 in accordance with the letter dated 14<sup>th</sup> December (sic) 2023. The landlord's re-entry into the premises was in response to the tenant's breach of the terms of the lease agreement.



- e. That the Tribunal lacks jurisdiction to entertain the suit herein as it is vexatious and an abuse of the Tribunal's process.

### Analysis and determination

2. The mainstay of the Respondent's preliminary objection is that the Tribunal lacks the jurisdiction to hear and determine this matter because the lease agreement governing the relationship between the parties does not answer to the definition and meaning ascribed to a controlled tenancy under Section 2 of [Cap 301](#).
3. Under Section 2(1) of [Cap 301](#), 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 provisions for termination otherwise than for breach of covenant, within five years from the commencement thereof or
    - iii. Relates to premises of 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 a tenant shall be a controlled tenancy.
4. It is common ground that the lease agreement governing the parties in this dispute is the one dated 25.11.2021 and produced as exhibit JO-1 in the tenant's affidavit in support of her application. The least term is a period of five years and six months. I have perused the said lease agreement and I agree with the Respondent that it does not contain a provision for termination otherwise than for breach of the covenants therein. In these circumstances, the tenancy between the parties is not a controlled tenancy under the provisions of Section 2 of [Cap 301](#) and the Tribunal therefore lacks the jurisdiction to hear and determine this matter.
5. Can the Tribunal proceed any further with this matter having determined that it has no jurisdiction? In the case of; [Owners of Motor Vessel Lillian "S" v Caltex Kenya Limited](#) [1989] IKLR the court while dealing with the issue of jurisdiction stated;
- “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 tools in respect of a matter before it the moment it holds the opinion that it is without jurisdiction.”
6. In the circumstances, I do not have to go any further in this matter but I need to comment on the Tenant's submissions that for the reasons that the lease agreement between the parties was not registered, it amounted to a periodic tenancy and therefore a month to month tenancy. The clear term of the lease agreement is five years and six months and I hold it to be valid inter partes even in the absence of registration (see the case of [Mega Garment Ltd v Mistry Jadua Parbat & Co. \[EPZ\] Limited](#)).
7. I therefore do find the preliminary objection by the landlord to be merited and having found that the Tribunal has no jurisdiction to hear and determine this matter, the same is dismissed for want of jurisdiction with costs to the Respondent.



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY TIS 8<sup>TH</sup> DECEMBER 2023.**

**HON. CYPRIAN MUGAMBI - CHAIRPERSON 8.12.2023**

In the presence of;

Ms. Maina holding brief for Mr. Kisilu for the landlord/Respondent

Ms. Kinyanjui holding brief for Ms. Kinyua for the tenant/Applicant

