



**Oumarou v Leo Investments Limited (Tribunal Case E436 of 2024)
[2024] KEBPRT 804 (KLR) (21 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 804 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E436 OF 2024
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
MAY 21, 2024**

BETWEEN

NJIKAM OUMAROU TENANT

AND

LEO INVESTMENTS LIMITED LANDLORD

RULING

1. The Tenant/Applicant originated these proceedings by way of the Reference dated 13.4.2024 and the Complaint dated 5.04.2024. The later is unknown to the [Landlord and Tenant \(shops, hotels and Catering Establishments\) Act](#) (Cap 301) herein after “the Act.”
2. The Complaint by the Tenant is that the Landlord had failed to install internet connectivity at the demised premises as promised. The Tenant grieved that the Landlord knew just too well that its business was singularly dependent on wifi to operate.
3. The Tenant therefore sought for the following reliefs;-
 - a. That its items held by the defendant be released.
 - b. Refund of the Tenant’s two (2) months rent security deposit.
 - c. Loss of daily income of Kshs. 4,000/=.
 - d. Damages and costs of this suit.
4. The suit was accompanied by the notice of motion Application dated 05.04.2024. It rehearsed the same prayers that were in the Reference and the complaint.
5. The parties made oral submissions on the 3.05.2023 and for the Applicant it was submitted that he just required to be released from the tenancy and was also willing to forego one month’s rent paid as deposit and further abandon the prayers for damages.



In essence that the license to leave the tenancy would by implication render the suit exhausted.

6. The Tenant finally submitted that the license agreement dated 30.12.2023 was never executed by December, 2023 nor registered thus it was not enforceable. He claimed that he only signed what he referred to as bio data page of the agreement which he was only made to sign on 29.01.2024 after his increased demands for installation of internet.
7. The Respondent on its part filed the Replying affidavit sworn by Doreen Nyawira on the 25.4.2024. It also relied on the oral submissions by M/S Kendi made on the 3.05.2024. The tenor of the Landlord's evidence is that;
 - a. The parties were bound by the license agreement dated 30.12.2023. The court's duty was only to interpret and enforce the same. The case of National Bank of Kenya Ltd vs Pipe Plastic & Another was cited.
 - b. The Tenant was to install internet if it wanted to have services of the same and that the premises were taken in their condition then without any further expectation from the landlord.
 - c. The relationship between the parties had a lock in period of one (1) year and thereafter any party would issue the other a two (2) months' notice to terminate the same.
 - d. The Tenant was required in the event he wanted to terminate the tenancy to pay the one (1) year rent for the lock-in period and two (2) months' rent in lieu of notice.
 - e. In the event the Tenant was allowed to vacate the premises, then the jurisdiction of this court to hear the suit would be ousted.
 - f. The landlord therefore sought for the Application dated 5.04.2024 to be dismissed with costs.
8. From the materials placed before me and the submissions by both parties, I am of the view that the issues for determination in this matter are the following; -
 - A: Whether the lease/license agreement dated 30.12.2023 is lawful and therefore binding on the parties.
 - B: Whether the Tenant's Application is merited.
 - C: Who should bear the costs of this suit.

Issue No. A: Whether the lease/license agreement dated 30.12.2023 is lawful and therefore binding on the parties.

9. A close scrutiny on the instrument of license speaks to the fact that the same was never executed by the Landlord/Respondent. Though the Tenant signed the same, it was in the absence of a witness. In my view, this was not a lease or license instrument capable of being enforced.
10. Section 37 of the [*Companies Act*](#) provides the following options for execution of documents by a company;
 - “ 37(1) A document is executed by a company
 - a. By the affixing of its common seal (if any) and witnessed by a director; or
 - b. In accordance with sub-section (2) .
 - (2) A document is validly executed by a company if it is signed on behalf of the company-



- (a) by two (2) authorized signatories; or by a director of the company in the presence of a witness who attests the signature.”
10. The law of contract Act at Section 3(3) provides that;-
- “No suit shall be brought upon a contract for the disposition of an interest in land unless-
- a. The contract upon which the suit is founded-
- i. Is in writing
- ii. Is signed by all the parties thereto; and
- iii. The signature of each party signing has been attested by a witness who is present when the contract was signed by such party.”
11. It is not in doubt that the license/lease agreement dated 30.12.2023 was never executed by the Landlord and that the signature of the Tenant did not have a witness. In the case of Jeuk Suk Kim & Another vs E.J. Austin & 2 Others Civil Appeal No. 265 of 2010 [2013] eKLR, the court held that;-
- “In the absence of evidence of valid execution of the document and prove of the agency, the document is not enforceable as a contract either by the Respondents or by the company.”
12. Having found that the contract or license dated 30.12.2023 as exemplified in the Applicant’s annexure “NON-1” dated 30.12.2023 is not bidding, the applicable law in determination of all issues by the parties herein is Section 2(1) of the Act which provides that;-
- “A 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 (5) years; or
- ii. Contains provision for termination otherwise than for breach of covenant within five (5) years from the date of covenant thereof.”
13. Further Reference is sought from Section 57(2), (3) and (4) of the Land Act which provides that;-
- “(2) if the owner of land permits the exclusive occupation of the land or any part of it by any person at a rent but without any agreement in writing, that occupation shall be deemed to constitute a periodic tenancy.
- (3) The periodic tenancy contemplated in sub section (1) shall be the period by Reference to which the rent is payable; and
- (4) A periodic tenancy may be terminated by either party giving notice to the other, the length of which shall be not less than the period of the tenancy and shall expire on one of the days on which rent is payable.
14. In my view, the relationship between the parties herein is a periodic tenancy running from month to month as the rent from evidence on record was payable monthly. The Tenant therefore required to give at least a one (1) months’ notice to the Tenant to vacate the premises. The termination notice by



the letter dated 18.03.2024 could therefore only take effect on the 18.05.2024. By this time, the rent for May, 2024 should have already been paid.

15. For clarity, Section 4(2) of the Act in the circumstances of this case was not applicable as it does not provide for termination by the Tenant. There was also no agreement or lease that provided the period of notice to terminate.

Therefore, Section 57(4) of the [Land Act](#) comes into action.

16. The upshot of all these is that, the tenancy/license/agreement between the parties terminated effectively the 18.05.2024. For that reason, the rent for May, 2024 has been considered as paid in full and in view of the rent security deposit, the Tenant will be at liberty to evacuate from the demised premises immediately and unconditionally on by 31.05.2024 and the Respondent to facilitate the same.

Issue No. B: Whether the Tenant's Application is merited

17. From the above analysis, it is plain that the Tenant has largely succeeded in his Application and by implication the suit. This is more so in that he has conceded to abandoning all the other prayers in the suit except the twin prayers to be allowed to leave the suit premises and to be refunded at least Kshs. 30,000/= paid as rent deposit for security. It has however been determined that the rent deposit of Kshs. 60,000/= will cater for the rents for April and May, 2024 which are yet to be paid. In that regard, the Respondent is not obligated to refund any rent deposit by the Tenant.
18. The Tenant having abandoned all the other reliefs as sought in the plaint dated 5.04.2024 and the Reference dated 13.04.2023, the same are declared as resolved in the same terms as the Application hereinabove.

Issue No. C: Who should bear the costs of the suit

19. The Tenant did not give the requisite notice to vacate and had infact appended his signature to the ill-fated license agreement only to thereafter grieve about the same. The landlord on its part had acted in compliance of the said agreement and was not obligated to comply with the unlawful notice dated 18.03.2024. We would therefore direct that each party bears own costs.
20. In the final analysis, the orders that commend to us are the following:-
 - (a) That the lease/license agreement between the parties herein terminated effective the 18.05.2024.
 - (b) That the Tenant is at liberty to evacuate from the demised premises immediately and in any event by the 31.05.2024.
 - (c) That the rent deposit paid for security shall be treated as the rent for the months of April and May, 2024.
 - (d) That the plaint dated 05.04.2024 and the Reference dated 13.04.2024 are compromised and resolved in the same terms.
 - (e) That each party shall bear own costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF MAY, 2024.

HON. NDEGWA WAHOME, MBS

PANEL CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL



AND

HON. JOYCE MURIGI

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of M/S Kendi for the Landlord and M/S Kilima for the Tenant

Court: Ruling to be supplied on payment of the requisite court fees.

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