



**Hombe v Njau t/a Grand Webbs Bar (Tribunal Case E052 of 2022)  
[2023] KEBPRT 1299 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1299 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E052 OF 2022  
CN MUGAMBI, CHAIR  
JULY 13, 2023**

**BETWEEN**

**EDWARD KIBE HOMBE ..... LANDLORD**

**AND**

**PETER WAITITU NJAU T/A GRAND WEBBS BAR ..... TENANT**

**RULING**

1. The Landlord's notice of preliminary objection dated 21.10.2022 is sought on the grounds :-  
  
"That the proceedings offend the provisions of Section 2 of the ([\*Landlords and Tenants/ Shops, Hotels and Catering establishments\) Act\*](#) Cap 301 of the Laws of Kenya as the tenancy is not controlled as contemplated by the stated provision based on the fact that the lease was reduced into writing for a period of ten (10) years removing the tenancy from the supervision and enforcement of the Tribunal."
2. This is no doubt, an interesting notice of preliminary objection. The objection has been brought by the landlord who is the party who initiated these proceedings, so the objection is in a sense brought by a party against its own case.
3. The landlord by his application dated 27.4.2022 sought orders that the tenant be evicted from the suit premises and further be ordered to clear out the outstanding rent arrears. The landlord also sought leave to levy distress. The landlord's application was based on the ground *inter alia* that the landlord had issued a two months' notice to terminate tenancy and which the tenant had not responded to.
4. The tenant by his application dated 25.7.2022 sought for amongst other orders, an order that the Tribunal grants her leave to file a reference against the landlord's notice to terminate tenancy dated 14.2.222 out of time. This prayer was granted by the Tribunal on 6.9.2022, the effect of which was that the landlord's notice to terminate tenancy was therefore opposed.



5. From the record, I also note that this suit was consolidated with case no E128 of 2022 on 6.3.2023. In file no E128 of 2022, the tenant had filed a reference against the landlord's notice to terminate tenancy dated 14.2.2022. The reference is dated 6.9.2022 but the delay in filing the same was cured by the orders of the Tribunal on 6.9.2022.

6. Does the Tribunal therefore have jurisdiction to hear and determine this dispute?

According to counsel for the landlord, the lease between the parties herein was for ten years beginning 1.5.2012 and was set to expire on 30.4.2022. I have perused the lease agreement between the parties herein and indeed the clause on tenancy states;-

“The lessor hereby gives the aforesaid premises for bar and restaurant to be carried out by the tenant from the 1<sup>st</sup> day of May 2012 on a monthly basis for period of ten years subject to a review under new terms.”

7. The lease agreement expired on or about May 2022 by effluxion of time. From the landlord's affidavit sworn on 28.8.2022, at paragraph 6, the landlord states;

“6- that the tenant annexed M-pesa message purportedly showing payments which I have shown in what respect the same were paid as per the annexure hereto attached and marked EKH1.”

8. I have seen and read the content of annexure “EKH1 which contains the tenant's Mpesa payments summary. From the said exhibit, it is clear that the tenant paid and the landlord accepted rent for the months of May and June 2022 after the lease had expired. This acceptance of rent after the lease had expired brought the tenancy within the purview of a controlled tenancy. In this regard, Section 60(2) of the Land Act provides as follows;-

“A lessor who accepts rent in respect of any period after the lease has been terminated or the terms of the lease has expired shall not by reason of that fact be deemed to have consented to the lessee remaining in possession of the land or as having given up on any of the rights or remedies of the lessor against the lessee for breach of a covenant or condition of the lease and if the lessor continues to accept rent from a tenant who remains in possession for two months after the termination of the lease, a periodic lease from month to month shall be deemed to have come into force.”

9. In the circumstances, I do not find any merits in the landlord's notice of preliminary objection and proceed to dismiss the same. The tenant's reference opposing the landlord's notice to terminate tenancy dated 14.2.2022 is to proceed to hearing and determination.

**RULING DATED, SIGNED AND DELIVERED THIS 13<sup>TH</sup> DAY OF JULY 2023**

**HON. CYPRIAN MUGAMBI**

**CHAIRPERSON**

**13.7.2023**

