



**Gachanja & another v Narok Nyawira Enterprise & another (Tribunal
Case E228 of 2023) [2024] KEBPRT 542 (KLR) (3 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 542 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E228 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
MAY 3, 2024**

BETWEEN

JESSE KAMAU GACHANJA 1ST APPLICANT

LUCY NJERI WANJIKU 2ND APPLICANT

AND

NAROK NYAWIRA ENTERPRISE 1ST RESPONDENT

LYDIA WANGECHI KANYI 2ND RESPONDENT

RULING

A. Background

1. Before us is a Notice of Preliminary Objection dated 17th January, 2024 which is based on the following grounds; -
 - i. That there exists no landlord/tenant relationship between the applicants and the respondents.
 - ii. That there is no attached notice to vacate or anything to suggest such notice attached to the application.
2. The 1st applicant/tenant filed a supplementary affidavit dated 1st February, 2024 to oppose the notice of preliminary objection, in which he deposes as follows; -
 - i. That the 1st respondent/landlord sold the suit premises to the 2nd respondent where the tenants have been in occupation for the last 3 years.
 - ii. That the 1st respondent/landlord did not give the applicants notice to vacate the suit premises considering that she was selling the property to the 2nd respondent.



- iii. That the applicants were not involved in the sale agreement of the suit premises or the transaction involving the change of hands of the premises to the 2nd respondent.
 - iv. That the applicants only came to know about the change of hands when the 2nd respondent/landlord started threatening the applicants with the oral notice of eviction.
 - v. That the applicant was a month-to-month tenant of the 1st respondent.
 - vi. That the 2nd respondent purchased the suit premises with the knowledge that the applicant was still carrying out business in the suit premises and that the applicants/tenants are entitled to sufficient notice to terminate the tenancy.
3. The tribunal ordered that the matter be disposed of by way of written submissions and both parties complied with the tenants filing theirs dated 23rd February, 2024 and the respondents/landlords filing theirs dated 20th March, 2024.
 4. The applicants/tenants in their submissions admit that there is no landlord/tenant relationship between them and the 2nd respondent who was aware of the existence of the tenants in the suit premises when she was purchasing the building.
 5. Furthermore, the applicants/tenants submit that they were not involved in the process where the building changed hands and that the 1st respondent/landlord did not issue any notice informing the tenants/applicants that the building was changing hands nether did the 1st respondent/landlord issue a notice to terminate the tenancy.
 6. The respondents/landlords on the other hand submit that the parties herein do not have a lease agreement and that therefore, they do not have a landlord/tenant relationship.

B. Analysis and Determination

7. The test of what constitutes a Preliminary objection was settled in the locus classicus case of Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors (1969) EA 696 where it was stated as follows:

“----a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case, Sir Charles Newbold, P. stated:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

8. In the instant case we have perused the grounds listed by the respondents/landlords in the Notice of Preliminary Objection and we note that the respondents/landlords have not tendered any evidence to show that the applicants/tenants herein are not in occupation of the suit premises, neither is there any evidence to show that the applicants/tenants herein are not tenants at the suit premises.



9. The applicants/tenants on the other hand have sworn in their affidavits dated 1st February, 2024 and 18th December, 2023 that they have been tenants at the suit premises since 1st March, 2021.
10. The tenants have also filed bank receipts showing payments made to the 1st respondent/landlord herein.
11. Section 2(1) of Cap 301 laws of Kenya defines a controlled tenancy as follows; -
 - “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 provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
 - (iii) relates to premises of a class specified under subsection (2) of this section:
12. In view of the above provision, the absence of a written tenancy agreement does not mean that there is no landlord/tenant relationship. The tenancy herein is thus a controlled tenancy within the dictates of Cap 301 Laws of Kenya.
13. Based on the findings above and in absence of evidence to prove critical facts which are contested, this tribunal has no other option than to dismiss the notice of preliminary objection herein and this matter shall proceed to hearing of the application dated 18th December, 2023.

C. Orders

14. In view of the foregoing, the following final orders commend to us; -
 - a. The Notice of preliminary Objection dated 17th January, 2024 is hereby dismissed.
 - b. The respondents shall file and exchange their response to the application dated 18th December, 2023 within 14 days hereof and the parties shall file their written submissions within 28 days thereafter with the tenant starting.
 - c. Mention on 1st July, 2024 to confirm compliance and fix a ruling date.
- It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY of MAY 2024.

HON. JOYCE AKINYI OSODO - (PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE - (MEMBER)

In the presence of:

Gichuki for Tenants/Applicants

No appearance for respondents

