



**Githinji t/a Aviator Bar And Restaurant v Orora & another (Tribunal
Case E353 of 2023) [2023] KEBPRT 1316 (KLR) (7 June 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1316 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E353 OF 2023
CN MUGAMBI, CHAIR
JUNE 7, 2023**

BETWEEN

**MICHEAL WARUI GITHINJI T/A AVIATOR BAR AND
RESTAURANT APPLICANT**

AND

**STEVE NYAGAKA ORORA 1ST RESPONDENT
OKUKU AGENCIES AUCTIONEERS 2ND RESPONDENT**

RULING

1. The notice of preliminary objection by the landlord/Respondent dated 18.4.2023 is brought on the grounds that the Tribunal lacks the jurisdiction to entertain the reference herein.
2. The landlord in support of the preliminary objection has submitted that the Applicant/Tenant duly executed a lease agreement with the Respondent for a period of five years, six months which lease commenced on 1.10.2022 and was set to expire on 30.4.2028.
3. The above contention has not been challenged by the tenant who has not filed any submissions in objection to the notice of preliminary objection by the landlord.
4. I note that the tenant did not even annex the lease agreement to his affidavit and the court reads a lot of mischief in that deliberate omission calculated to hoodwink the tribunal to assume a jurisdiction it clearly does not have.
5. I have perused the lease agreement which is not contested by the tenant and indeed clause 1.1.13 provides as follows:-

“Term” means five years six months from and including the date of commencement.”



6. The agreement does not have a provision for termination of the tenancy otherwise than for breach of covenant within five years from the commencement thereof. That being the case, the tenancy between the tenant and the 1st Respondent is not a controlled tenancy and the Tribunal therefore lacks jurisdiction to hear and determine this matter.
7. For clarity, under Section 2(1) of Cap 301, controlled tenancy means a tenancy of a shop, hotel catering establishment;
 - a. Which has not been reduced into writing or
 - b. Which has been reduced into writing but 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 sub-section 2 of this section.

The lease agreement between the tenant and the 1st Respondent does not fall in any of the above categories and like it has been stated hereinabove, it is not a controlled tenancy.

8. In view of the foregoing, I do find merit in the landlord's notice of preliminary objection, allow the same and proceed to dismiss the tenant's reference and application dated 5.4.2023 with costs to the 1st Respondent.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF JUNE 2023

HON. CYPRIAN MUGAMBI - CHAIRPERSON

7. 6.2023

In the presence of;

Mr. Michael Githinji – tenant in person

In the absence of the landlord and Counsel

