



Kingoina Obuya Advocates v National Fund for the Disabled of Kenya Registered Trustees & another (Tribunal Case E064 of 2024) [2024] KEBPRT 688 (KLR) (Civ) (27 March 2024) (Ruling)

Neutral citation: [2024] KEBPRT 688 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E064 OF 2024
CN MUGAMBI, MEMBER
MARCH 27, 2024**

BETWEEN

KINGOINA OBUYA ADVOCATES APPLICANT

AND

**NATIONAL FUND FOR THE DISABLED OF KENYA REGISTERED
TRUSTEES 1ST RESPONDENT
GARAM INVESTMENTS AUCTIONEERS 2ND RESPONDENT**

RULING

1. The notice of Preliminary objection by the Landlord dated 31.1.2024 is brought on the grounds;
 - a. That this court lacks jurisdiction to hear this matter or grant the orders sought as the landlord and the Tenant have a written tenancy agreement for a period in excess of five years.
 - b. That the tenancy is therefore not a controlled tenancy within the meaning of Section 2(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 of the Laws of Kenya.
2. I have seen the letter of offer addressed to the Tenant by the Landlord dated 16.3.2022. The lease term in the said letter of offer is six years commencing 1.5.2022. The letter of offer sets out the covenant between the parties and at clause 17 thereof, the letter of offer provides as follows;-

“Standard Lease

“The lease will be on the terms of the landlord’s Standard lease. A copy of the Standard lease which includes the terms referred to in this letter in addition to the Standard clauses set out therein shall be deemed to have been accepted on your signature hereunder and is attached



hereto. Until such time as the Standard lease has been executed and registered, all covenants, conditions and the rent agreed shall be deemed to have been incorporated in this offer.”

3. Clause 20(b) of the lease titled Acceptance provides as follows:-

This offer shall only be accepted on the following terms:-

(b) Until such time as the Standard lease has been executed and registered, all covenants and conditions in the lease and rent agreed by you shall be deemed to have been incorporated in this letter.”

4. The Tenant duly accepted the terms and conditions set out in the letter of offer by appending his signature to the Tenant’s acceptance of offer and the Tenant’s confirmation/statement on 18.3.2022.
5. The letter of offer once executed by the Tenant in signing his acceptance thereof, formed a binding agreement between the parties even as the Standard lease had not been executed.
6. The lease period being one for the period of six years and there being no provision for termination otherwise than for breach of covenant, I do find that the tenancy between the parties herein is not a controlled tenancy.

Consequently, the Tribunal has no jurisdiction to hear and determine this dispute. The Tenant’s Reference is accordingly dismissed for want of jurisdiction. The Tenant will bear the costs of the Reference and the Application.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF MARCH, 2024.

HON. CYPRIAN MUGAMBI

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of;

Mr. Billing for the Respondents

Mr. Amenya for the Tenant

