



**Leo Investments Limited v Oloolmaitai & 3 others (Tribunal Case
60 of 2020) [2024] KEBPRT 1568 (KLR) (8 November 2024) (Judgment)**

Neutral citation: [2024] KEBPRT 1568 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE 60 OF 2020
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
NOVEMBER 8, 2024**

BETWEEN

LEO INVESTMENTS LIMITED TENANT

AND

SAMSON OLOOLMAITAI 1ST RESPONDENT

NTOORIAN KORIATA 2ND RESPONDENT

STANLEY KOINET KORIATA 3RD RESPONDENT

SERA NJOKI MUNGE T/A SANJOMU AUCTIONEERS 4TH RESPONDENT

JUDGMENT

A. Dispute Background

1. Leo Investments Limited T/a Mara Concord Game Lodge (hereinafter referred to as “the Tenant/Applicant/Claimant/Complainant”) moved this Tribunal vide a Reference dated 24th March 2020 pursuant to Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301, Laws of Kenya against Samson Ololmaitai, Ntoorian Koriata & Stanley Koinet Koriata (hereinafter called “the Landlords/Respondents”) complaining that the latter issued a demand notice for illegal, imaginary and disputed rent arrears of Ksh.2,000,000/= giving the Tenant/Applicant a notice period shorter than that provided for under Section 4(2), (3) & (5) of the Landlord and Tenant (Shops, Hotels and Catering Establishments Act) Cap 301.
2. It is the Tenant’s/Applicant’s case that the Respondents proceeded to levy distress for rent arrears which rent arrears were not owing having paid all the agreed rent up to the date of distress in contravention of the provisions of the [Distress for Rent Act](#), Cap 293 and without following the provisions of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), Cap 301, Laws of Kenya.



3. The Landlords/Respondents are also accused of having purported to terminate a controlled tenancy without following the provisions of Section 4(2), (3) & (5) of the Landlord and Tenant (Shops, Hotels and Catering Establishments Act) Cap 301.
4. They are further accused of denying and barring the Tenant/Applicant from accessing the premises without a valid court order to that effect by placing Masai Morans on the suit premises to stop and/or deter the entry of the Tenant/Applicant or its servants.
5. The Tenant/Applicant therefore prayed that this Tribunal investigates the matter and makes a determination on the following issues: -
 - a. Whether the purported 14 days' notice given by the Landlords/Respondents to it was unlawful, illegal, null and void ab initio.
 - b. That the Tenant was not in any arrears of rents as of 31st January, 2020 and is not liable for payment of any further rents with effect from 1st February, 2020 when the Landlords forcefully stopped the operations of the Game Lodge.
 - c. Whether the Proclamation and Distress by the Landlords through Sera Njoki Munge t/a Sanjomu Auctioneers carried out on 6th February, 2020 is illegal hence null and void ab initio and contrary to the laid down procedures and hence of no effect.
 - d. Grant of unlimited ingress and egress by the Tenant into and from the Game Lodge Premises situate on the 1st and 2nd Respondents' parcel of land known as CIS-Mara/lemek/173 within Masai Mara game Reserve.
 - e. For the taking of a full inventory of the Tenant's moveable goods held at the premises and valuation of the same by an independent valuer to ascertain their full value.
 - f. For the valuation of all the immoveable developments undertaken by the Tenant/Applicant in the premises with the full knowledge and consent of the Landlords/Respondents by an independent valuer to establish their full value.
 - g. Grant the orders giving the Tenant full freedom to remove from the Game Lodge Premises situate on the 1st and 2nd Respondents' parcel of land known as CIS-Mara/lemek/173 within Masai Mara game Reserve of all its moveable goods therefrom.
 - h. A finding that the Tenant has suffered loss and damage as a direct consequence of the Landlords' and Auctioneers' illegal and unlawful acts and omissions and is entitled to damages.
6. The Tenant/Applicant simultaneously moved this Tribunal through a motion dated 24th March 2020 seeking for injunctive reliefs pending hearing inter- partes and determination of the application as well as the Complaint herein.
7. The application sought in pertinent part that pending hearing and determination of the reference/complaint, there be an order of injunction restraining the Landlords/Respondents, either by themselves, agents, M/S Sanjomu Auctioneers, Servants and/or any other person acting under the Landlords/Respondents instructions from attaching, carting away and/or selling the Tenant's moveable goods from the suit property Mara Concord Game Lodge situate on the Landlords parcel of land known as CIS- Mara/lemek/173.
8. The Tenant/Applicant further sought for orders that pending hearing and determination of the complaint herein, there be an order of injunction restraining the Landlords /Respondents, either by themselves, agents, M/S Sanjomu Auctioneers, Servants and /or any other person acting under the



Landlords /Respondents instructions from further entering upon, interfering with, evicting, levying distress, Leasing out to any Third Party and /or otherwise interfering with the Tenant /Applicant's free access to the demised premises and use of its goods and stock situate on CIS-Mara/lemek/173 and that the OCS Narok Police Station be and is hereby directed and/or ordered to enforce and oversee compliance of the orders issued herein. The Tenant also sought that the costs of the application be provided for.

9. Interim ex-parte orders were given by the then Chairman of this Tribunal, Hon. Mbichi Mboroki on 26th March 2020 and the application was fixed for hearing inter-partes on 26th March 2020. The court record shows that when the matter came up on 26th March 2020, the remaining prayers in the application were granted in absence of the Landlords/Respondents and the matter was then fixed for hearing on 6th May 2020.
10. On 6th May 2020, the matter was adjourned to 4th June 2020 and the interim orders were extended. On the latter date, there was no appearance on the part of the Landlords/Respondents and the application was allowed in terms of prayers d, e and f of the notice of motion. The Landlords were ordered to pay costs in the sum of Kshs 50,000/= in respect of the application. The Tenant/Applicant was granted leave to institute contempt of court proceedings against the Respondents in default of compliance with the orders. It would appear that the Tenant moved the Environment & Land Court vide Narok ELC MISC NO. 2 of 2020 for the Respondents' committal to prison for contempt of court. It is not clear what became of the said proceedings.
11. On 30th March 2021, the Landlords moved this Tribunal by way of a notice of motion dated 30th March 2021 seeking inter-alia for orders that the injunction issued on 26th March 2020 and confirmed on 4th June 2020 in favor of the Claimant be vacated, set aside entirely and discharged having become void by effluxion of time. Alternatively, they sought that the injunction order issued on 26th March 2020 and confirmed on 4th June 2020 in favor of the Claimant be vacated, set aside entirely and discharged, having become void by effluxion of time. They also sought for striking out of the Complaint for being an abuse of the court process and/or for want of jurisdiction.
12. The application was canvassed before Hon. Andrew Muma, Vice Chair and in a ruling delivered on 14th July 2021, the same was dismissed.
13. The Landlords/Respondents preferred an appeal against the said ruling vide Narok Elc Appeal Case No. 8 Of 2021. The appeal was heard before Hon. Justice Mbogo C.G and in a judgement delivered on 31st January 2022, the same was dismissed with costs to the Respondent (Tenant herein).
14. It is instructive to note what the learned Judge stated at paragraphs 18, 19 & 20 of his judgement: -
 18. In determining that it had jurisdiction to entertain the case before it, it is apparent that the BPRT relied on the decision of this court in *Leo Investment Limited t/a Mara Concord Game Lodge Vs Samson Ololmaitai & Another* (2020) eKLR wherein the Respondent had filed suit against the Appellants in this case.

The Appellants in response filed a notice of preliminary objection contending that the dispute therein involved a Landlord and Tenant relationship and that as such, the Respondent ought to have filed a reference before the BPRT.
 19. This court in its ruling delivered on 13th March 2020 agreed with the Appellants thereby striking out the Respondent's suit while holding that the Respondent ought to have filed a reference before the BPRT. The Respondent then proceeded and filed Nakuru Business



Premises Rent Tribunal Case No. 60 of 2020. It is the ruling of the BPRT in that case that is the subject of the present appeal.

20. From the foregoing chronological narration of the background of this case, there is no doubt that the issue of jurisdiction raised by the Appellants challenging the powers of the BPRT has already had its day before this court on the above cited case of Leo Investment Limited t/a Mara Concord Game
- Lodge Vs Samson Ololmaitai & Another (2020) eKLR. Accordingly, I find no reason to depart from the finding of this court in the above cited case. The upshot of the foregoing is that the court finds that the BPRT had the requisite jurisdiction to entertain the case before it.”
15. In subsequent proceedings before this Tribunal, both parties were directed to file and exchange witnesses’ statements and documents in support of their respective cases. The Tenant filed a statement by its director one Rahim Chatur which was relied upon by Jackline Kendi Kimathi (a legal officer of the Tenant/Applicant) as her evidence in chief during oral hearing of the case.
16. On the other hand, the Landlords filed a witness statement by Samson Ololmaitai dated 24th July 2022 and his supplementary statement dated 4th October 2022. The same were adopted as his evidence in chief during oral hearing of the case.
17. According to the witness statement of Rahim Chatur, sometimes in June 2016, they were approached by the Landlords who offered to lease to them the suit premises so that they could take over the running of the enterprises from the previous tenant known as Furahia Africa Promotions Limited.
18. The 1st and the 2nd Landlords represented to the Tenant that Furahia Africa Promotion Limited had become unable to operate the premises which by then was called Mara Wild Beast Lodge since they were unable to pay rent in accordance with the agreement dated 29th August, 2012 and as such they had even left the premises unattended to.
19. The said offer saw a series of negotiations between the Landlords through their Counsel on record and the Tenant through their former advocates known as Mohammed Madhani Advocates which led to parole agreement that should the Tenant feel at ease to take the offer, then they would change the name of the hotel from Mara Wild Beast Lodge to Mara Concord Game Lodge.
20. After evaluating the offer given to them by the 1st and 2nd Landlords, they ultimately agreed to accept the offer on condition that they were to renovate the premises and elevate the same to the level that could compete favourably with related businesses within the area. The said renovation was contributed to by the fact that the premises was at the time seriously dilapidated because of neglect by the former tenants. It was also agreed that due to the poor state of the enterprises, the Tenants would take some time to renovate the buildings, market the hotel, add other facilities and generally do a facelift that would make the hotel attractive to the customers.
21. In the intervening period, it was agreed that the Tenant would pay Kshs,150,000/= to the 1st and 2nd Landlords which amount they were to share equally. Having settled on the above -mentioned terms verbally with the Landlords, they embarked on the renovation of the premises which saw the following constructions and purchases:
- i. Swimming pool
 - ii. Upgrade of the staff quarters
 - iii. Drivers’ rooms



- iv. New beds for 50 rooms
 - v. Renovation of toilets
 - vi. Installation of power generators
 - vii. Two-line fencing which included an electric fence to prevent wild animals from accessing the premises
 - viii. Purchase and installation of new gym equipment Among other investments.
22. Having done all these renovations and purchases, the Tenant intensified the marketing of the new hotel and in the meantime religiously paid rent directly to the Landlords as agreed verbally between them in the presence of their respective counsel.
23. After all these concerted efforts from the Tenant's end, the business began to pick up and customers started flowing in. The Landlords on seeing this progress began to act unreasonably by increasing rent unjustifiably. In 2018, they increased the rent from Kshs. 150,000/= to Kshs. 200,000/= and in 2019 they also increased the rent from Kshs. 200,000/= to Kshs. 250,000/=.
24. Besides the aforementioned unreasonable and unexplained rent increments which the Tenant took in stride, the Landlords demanded that they would be entitled to 10% of the income received. The Tenant was uncomfortable with this demand and politely declined to yield to the request.
25. The Landlords then demanded that since the running rent was by then Kshs. 250,000/=: they would then assume that the rent from the time the Tenant took over the premises was meant to be Kshs. 250,000/= and as such it should pay the balance which was calculated to be Kshs. 5,000,000/= by the time they made the demand. Since that was not part of the agreement between them, the Tenant similarly asked them politely to shelve the same demand.
26. The Landlords then lowered the demand of Kshs. 5,000,000/= to Kshs. 2,000,000/= via an undated notice which was delivered to the tenant on 15th day of January, 2020, but the Tenant still felt that this demand was outside the realm of the agreed terms.
27. When the Tenant declined to honour the demand by the Landlords to pay Kshs. 2,000,000/=: the Landlords hired goons who went and vandalized the premises thereby causing the Tenant's business to shut down. The Landlords then subsequently, through their advocates on record instructed an Auctioneer to proclaim the Tenant's property on the premises for a ghost rent arrears amounting to Kshs. 14,921,706/=:
28. The Landlords paralyzed the Tenant's business which had already picked up because of greed and illegal attempts to unjustifiably increase rent and earn more than what is reasonable in the circumstances. It is against the foregoing background that the Tenant approached the Environment and Land Court and finally this Tribunal for redress.
29. The Landlords through the witness statement of Samson Oloimaitai aforesaid and his oral testimony in court stated that they oppose these proceedings and seek the striking out of the purported Complaint dated 26th March, 2020 on the basis that they are not "Landlords" of the Applicant neither is the Applicant their Tenant as alleged.
30. They contend that the Claimant is not on their land and it has no tenancy or such agreement with any of the Respondents. They contend that the powers conferred on this Tribunal under Section 12, inter alia, include the power to determine whether or not any tenancy is a controlled one.



31. It is their position that this Tribunal has no jurisdiction to entertain the proceedings ab initio as no Landlord-Tenant relationship subsists between them as owners of the land known as L.R NO. Narok/cis- Mara/lemek/173 and the Claimant.
32. The Respondents contend that by its own admission in paragraph 4 of the Complaint filed on 24th March 2020, the Complainant admitted that it was not in possession of the suit premises and hence these proceedings are nullity ab initio.
33. They also contend that the Search Certificate on the title of their land demonstrates that there is no Lease or Sub-Lease in favor of Leo Investments over their land. Rather, the Lessee is indicated as Furahia Africa Limited entered into on 29th August 2012 with the 1st and 2nd Respondents.
34. The rent reserved under the lease was being remitted intermittently and by mid, 2015, Furahia Africa Ltd had defaulted immensely on rent due and contrary to the allegations made by Rahim Chatur in his Witness Statement dated 18th March 2022 alleging in paragraph 2 thereof that sometime in June 2016, they approached the Tenant to take over the running of the enterprises from the previous tenant known as Furahia Africa Promotions Ltd, it was not true.
35. Furahia Africa Ltd had a valid lease with the Respondents and by a letter dated 24th June 2015, the Respondents instructed their Advocates on record to demand the remittance of the sum of Kshs. 3,168,000/= from Furahia Africa Ltd. Following the default to remit rent on time and the accumulated sums, the Advocates of Furahia Africa Ltd requested for a mutual meeting to resolve the mode of payment and by the Respondents' Advocates' letter dated 26th August 2015, they set out the terms of the remittance of the sums due.
36. In spite of the stated terms of remittance, by September 2015, the Lessor Furahia Africa Limited had not remitted the said dues and by a letter dated 1st September 2015 their Advocates sought to remit the dues by November 2015. Directors of Furahia Africa Ltd contacted the 1st Respondent requesting for indulgence from him and the 2nd Respondent due to financial difficulties as they sought to remit the sums outstanding in March 2016. This was confirmed by their lawyer by a letter dated 10th February 2016.
37. When the said Lessee, Furahia Africa Limited were unable to remit the rent due as promised, the 1st and 2nd Respondents proffered that they Surrender the Lease. By a letter dated 23rd January, 2017, the Respondents requested that they surrender the Lease.
38. By a letter dated 14th March 2017, Furahia Africa Limited sought for indulgence on the stated Surrender of Lease conditional upon them getting a suitable purchaser for its assets in the premises. They went on to state in the said letter as follows;
- “...Our Client has identified a prospective purchaser of the said assets who wishes to lease the premises upon our client surrendering the same. We enclose herewith a Draft Lease together with comments from the Advocate representing the party interested in purchasing our client's assets and thereafter leasing the premises for your approval and/or comments.”
39. According to the Respondents, the proposed purchaser of Furahia Africa Limited assets was none other than Leo Investments Limited who they did not source. They contend that at no time did they have the Surrender of Lease remitted to them by Furahia Africa Limited. As such, they were not aware of the terms of purchase of the items of Furahia Africa Limited by Leo Investments Limited.



40. On 4th May 2016, a law firm by the name of Kabiru & Co. Advocates wrote to the Landlords' Advocates on record introducing Leo Investments Ltd as their Client stating that "they have offered to take over the Lodge subject to the landlords' concurrence on the stated terms.
41. In response to the letter titled "Take Over Of Mara Wildebeast" from Kabiru & Co. Advocates, the Landlords' advocates on record wrote a letter dated 16th May 2016, stating as follows:
- "While our Clients are open to your Client's proposals (on a without prejudice basis), they are concerned about the breaches by Furahia Africa on the subsisting lease. Kindly let us know what amounts you hold for transmission from Furahia Africa to our Clients as lease payments."
42. According to the Landlords, it is clear that they were not accepting the Claimant herein as a tenant and it was to remit to them any and all moneys from Furahia Africa Ltd as intimated owing as back rent.
43. As the settlement of whatever negotiations between Furahia Africa Limited and Leo Investments Ltd about the takeover of the debt to the landlords were ongoing, they did not enter into any written agreement with Leo Investments as any entry of the said Claimant on their land would contravene the Lease as no assignment had been effected.
44. By an email of 13th July 2016 from the Landlords' Advocates to Furahia Africa Limited Directors, they informed them that if the Claimant herein Leo Investments had agreed to transmit what was due from Furahia Africa Limited as back rent to the Landlords was effected and the Surrender of Lease executed, they would then consider a written agreement with Leo Investment.
45. In the same breath, a new law firm called Mohammed & Madhani Advocates appeared and stated by a letter dated 2nd August 2016 that they were acting under instructions of the Claimant herein, Leo Investments Ltd who was therein christened as "Intended Tenant". The said law firm was seeking for a written contract of Lease with the Landlords over the suit property and was not a tenant.
46. As the back rent from Furahia Africa Limited was not remitted over the suit property's usage, the Respondents instructed their advocates on record to demand for vacant of the suit property by the said Lessee.
47. In early October 2016, Furahia Africa Ltd informed the Respondents that they agreed that Leo Investments Ltd would pay on their behalf the outstanding rent. As it was clear there was no tenant-landlord relationship being created, they received the said back rent as per the advice of Furahia Africa Ltd.
48. The Respondents asked Furahia Africa Ltd to formalize this arrangement due to the problems of executing against a third party for non-remittance of the rent and by a letter dated 3rd November 2016, the Lessee's Advocates, Kipkenda & Co. Advocates informed them as follows:
- "Our Client has advised that it has now found a suitable assignee for the Lease. We have also been advised that the assignee has met your client and are in the process of negotiating a new Lease for execution. The copy of letter of offer to your Client is herewith attached. Please do let us have your confirmation of acceptance of the aforementioned offer of your clients."
49. The Respondents contend that they did not accept imposition of the Claimant on them, as Furahia Africa Ltd apparently had a side agreement with the Claimant herein unknown to them. As no full back rent was remitted, by Furahia Africa Ltd to them, the Respondents contend that they instructed their Advocates to write to former's Advocates and by a letter dated 16th February 2017 informed



- them that without a Surrender Of Lease, there was no way the Claimant herein would have a written agreement to be on the suit property.
50. Without any disclosure to the Respondents on what Furahia Africa Ltd and the Claimant herein had agreed upon, the former noticed that the Claimant was then purporting to carry on the business of Furahia Africa Ltd on their land without their consent or approval.
 51. From Mid-2017 to late 2017, Furahia Africa Ltd went silent and the Respondents started noticing the Claimant seeking to entrench itself without paying rent at all.
 52. The Respondents received a letter dated 8th November 2017 from new Advocates known as Mitey & Co. Advocates stating that they acted for Furahia Africa Ltd in respect of the suit property's rent arrears. The said letter was copied mysteriously to the Claimant's Advocates, Mohammed & Madhani Advocates.
 53. By another letter dated 29th November 2017, the same Law firm of Mitey & Co. Advocates wrote to the Landlords again stating that they acted for Furahia Africa Ltd in respect of the suit property's rent arrears and sought for 10 days to clear. As the said Lessee, Furahia Africa Ltd defaulted in meeting the terms of the Lease, the Landlords could no longer tolerate the guise of the Claimant paying on behalf of Furahia Africa Ltd, the rent due without any Lease agreement.
 54. On 9th August 2018, the Respondents filed Narok Elc Case No. 55 of 2018 seeking to evict the said Furahia Africa Ltd from the suit land and indeed paid the Court fees and the matter was due for Judgement in Narok by the time of recording the initial witness statement.
 55. As the said Furahia Africa Ltd were still in the premises, the Landlords sought to levy distress against them and hence the instructions to Sanjomu Auctioneers dated 4th February 2020 and the resultant Proclamation. According to the Landlords, the order of 26th March 2020 which was extended on the 4th June 2020 was wrongly issued as they were the ones who were in possession of the suit property known as Narok/cis- Mara/lemek 173, situate in Narok County.
 56. The Respondents therefore contend that no Landlord-Tenant relationship exists as between them and the Complainant as would found or base a Claim under the statutory ambit of this Honourable Tribunal to intervene or issue any orders in favor of the Claimant.
 57. Through the supplementary witness statement, the 1st Respondent avers that on 9th August 2018, they filed Narok Hc Elc No. 55 of 2018 seeking to evict Furahia Africa Ltd from the suit land and that Judgement had been delivered.
 58. A Decree in the matter was issued to them on 28th September 2022 and according to them, this Honourable Tribunal cannot in the circumstances render itself on any issue that would in effect supersede the ELC Court's decision.
 59. It is the Respondents' contention that the Claimant's cause of action (if any) lies with Furahia Africa Ltd and not against them.
 60. The 1st Respondent concludes his witness statement with a contention that the Claimant fraudulently lied that it is in possession of the suit property Narok/cis-mara/ Lemek/173 as alleged tenants of the suit property when it is not, and that there is no tenancy agreement at all which was produced in proof of the alleged tenancy thereof.
 61. At the close of the case, both parties filed written submissions which we shall consider together with the issues for determination.



B. Issues For Determination:

- a. Whether there exists a controlled tenancy between the Applicant and the 1st & 2nd Respondents.
- b. Whether the notice served upon the Applicant is valid in law.
- c. Whether the distress levied against the Applicant is lawful.
- d. Whether the Applicant is entitled to the reliefs sought in the reference/complaint dated 24th March 2020.
- e. Who is liable to pay costs of the reference?

ISSUE (a) Whether there exists a controlled tenancy between the Applicant and the 1st & 2nd Respondents.

62. Section 2(1) of Cap 301 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:

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy.”

63. A tenant is defined as follows; -

“tenant” in relation to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding, and includes a sub-tenant”

64. It further defines a landlord as follows; -

“landlord”, in relation to a tenancy, means the person for the time being entitled, as between himself and the tenant, to the rents and profits of the premises payable under the terms of the tenancy.”

65. According to the witness statement of Rahim Chatur, who is the tenant’s director, sometime in June 2016, they were approached by the Landlords who offered to lease to them the suit premises so that they could take over the running of the enterprises from the previous tenant known as Furahia Africa Promotions Limited.

66. The 1st and the 2nd Landlords represented to the Tenant that Furahia Africa Promotions Limited had become unable to operate the premises which by then was called Mara Wild Beast Lodge since they were unable to pay rent in accordance with the agreement dated 29th August, 2012 and as such, they had even left the premises unattended to.



67. The said offer saw a series of negotiations between the Landlords through their Counsel on record and the Tenant through their former advocates known as Mohammed Madhani Advocates which led to parole agreement that should the Tenant feel at ease to take the offer, then they would change the name of the hotel from Mara Wild Beast Lodge to Mara Concord Game Lodge.
68. After evaluating the offer given to them by the 1st and 2nd Landlords, they ultimately agreed to accept the offer on condition that they were to renovate the premises and elevate the same to the level that could compete favourably with related businesses within the area. The said renovation was contributed to by the fact that the premises was at the time seriously dilapidated because of neglect by the former tenants. It was also agreed that due to the poor state of the enterprises, the Tenants would take some time to renovate the buildings, market the hotel, add other facilities and generally do a facelift that would make the hotel attractive to the customers.
69. In the intervening period, it was agreed that the Tenant would pay Kshs.150,000/= to the 1st and 2nd Landlords which amount they were to share equally. Having settled on the above-mentioned terms verbally with the Landlords, they embarked on the renovation of the premises which saw the following constructions and purchases:
- i. Swimming pool
 - ii. Upgrade of the staff quarters.
 - iii. Drivers' rooms.
 - iv. New beds for 50 rooms.
 - v. Renovation of toilets.
 - vi. Installation of power generators.
 - vii. Two-line fencing which included an electric fence to prevent wild animals from accessing the premises.
 - viii. Purchase and installation of new gym equipment.
- Among other investments.
70. Having done all these renovations and purchases, the Tenant intensified the marketing of the new hotel and in the meantime religiously paid rent directly to the Landlords as agreed verbally between them in the presence of their respective Counsel.
71. After all these concerted efforts from the Tenant's end, the business began to pick up and customers started flowing in. The Landlords on seeing this progress began to act unreasonably by increasing rent unjustifiably. In 2018, they increased the rent from Kshs. 150,000/= to Kshs. 200,000/= and in 2019, they also increased the rent from the Kshs. 200,000/= to Kshs.250.000/=.
72. Besides the aforementioned unreasonable and unexplained rent increments which the Tenant took in stride, the Landlords demanded that they would be entitled to 10% of the income received. The Tenant was uncomfortable with this demand and politely declined to yield to the request.
73. The Landlords then demanded that since the running rent was by then Kshs. 250,000/=, they would then assume that the rent from the time the Tenant took over the premises was meant to be Kshs. 250,000/= and as such, it should pay the balance which was calculated to be Kshs.5,000,000/= by the time they made the demand. Since that was not part of the agreement between them, the Tenant similarly asked them politely to shelve the said demand.



74. The Landlords then lowered the demand of Kshs. 5,000,000/= to Kshs. 2,000,000/= via an undated notice which was delivered to the tenant on 15th day of January, 2020, but the Tenant still felt that this demand was outside the realm of the agreed terms.
75. When the Tenant declined to honour the demand by the Landlords to pay Kshs. 2,000,000/=-, the Landlords hired goons who went and vandalized the premises thereby causing the Tenant's business to shut down. The Landlords then subsequently, through their advocates on record instructed an Auctioneer to proclaim the Tenant's property on the premises for a ghost rent arrears amounting to Kshs. 14,921,706/=-.
76. The Landlords paralyzed the Tenant's business which had already picked up because of alleged greed and illegal attempts to unjustifiably increase rent and earn more than what is reasonable in the circumstances. It is against the foregoing circumstances that the Tenant approached the Environment and Land Court and finally this Tribunal for redress.
77. The Landlords through the witness statements of Samson Oloimaitai aforesaid and his oral testimony in court stated that they oppose these proceedings and seek for the striking out of the Complaint dated 26th March, 2020 on the basis that they are not "Landlords" of the Applicant neither is the Applicant their Tenant as alleged.
78. They contend that the Claimant is not on their land and it has no tenancy or such agreement with any of the Respondents. They contend that the powers conferred on this Tribunal under Section 12, inter alia, include the power to determine whether or not any tenancy is a controlled one.
79. It is their position that this Tribunal has no jurisdiction to entertain the proceedings ab initio as no Landlord-Tenant relationship subsists between the Claimant and them as owners of the land known as L.R NO. Narok/cis-mara/lemek/173.
80. The Respondents contend that by its own admission in paragraph 4 of the Complaint filed on 24th March 2020, the Complainant admitted that it was not in possession of the suit premises and hence these proceedings are a nullity ab initio.
81. They also contend that the Search Certificate on the title of their land demonstrates that there is no Lease or Sub-Lease in favor of Leo Investments over their land. Rather, the Lessee is indicated as Furahia Africa Limited which was entered into on 29th August 2012 with the 1st and 2nd Respondents.
82. The rent reserved under the lease was being remitted intermittently and by mid, 2015, Furahia Africa Ltd had defaulted immensely on rent due and contrary to the allegations made by Rahim Chatur in his Witness Statement dated 18th March 2022 alleging in paragraph 2 thereof that sometime in June 2016, they approached the Tenant to take over the running of the enterprises from the previous tenant known as Furahia Africa Promotions Ltd, it was not true.
83. Furahia Africa Ltd had a valid lease with the Respondents and by a letter dated 24th June 2015, the Respondents instructed their Advocates on record to demand the remittance of the sum of Kshs. 3,168,000/= from Furahia Africa Ltd. Following the default to remit rent on time and the accumulated sums, the Advocates of Furahia Africa Ltd requested for a mutual meeting to resolve the mode of payment and by the Respondents' Advocates' letter dated 26th August 2015, they set out the terms of the remittance of the sums due.
84. In spite of the stated terms of remittance, by September 2015, the Lessor, Furahia Africa Limited had not remitted the said dues and by a letter dated 1st September 2015, their Advocates sought to remit the dues by November 2015. Directors of Furahia Africa Ltd contacted the 1st Respondent requesting for



- indulgence from him and the 2nd Respondent due to financial difficulties as they sought to remit the sums outstanding in March 2016. This was confirmed by their lawyer by a letter dated 10th February 2016.
85. When the said Lessee, Furahia Africa Limited were unable to remit the rent due as promised, the 1st and 2nd Respondents proffered that they Surrender the Lease. By a letter dated 23rd January, 2017, the Respondents requested that they surrender the Lease.
86. By a letter dated 14th March 2017, Furahia Africa Limited sought for indulgence on the stated Surrender of Lease conditional upon them getting a suitable purchaser for its assets in the premises. They went on to state in the said letter as follows;
- “...Our Client has identified a prospective purchaser of the said assets who wishes to lease the premises upon our client surrendering the same. We enclose herewith a Draft Lease together with comments from the Advocate representing the party interested in purchasing our client’s assets and thereafter leasing the premises for your approval and/or comments.”
87. According to the Respondents, the proposed purchaser of Furahia Africa Limited assets was none other than Leo Investments Limited who they did not source. They contend that at no time did they have the Surrender of Lease remitted to them by Furahia Africa Limited. As such, they were not aware of the terms of purchase of the items of Furahia Africa Limited by Leo Investments Limited.
88. On 4th May 2016, a law firm by the name of Kabiru & Co. Advocates wrote to the Landlords’ Advocates on record introducing Leo Investments Ltd as their Client stating that “they have offered to take over the Lodge subject to the landlords’ concurrence on the stated terms.”
89. In a letter dated 16th May 2016 titled “Take Over Of Mara Wildbeast” In response to the letter from Kabiru & Co. Advocates, the Landlords’ advocates on record stated:
- “While our Clients are open to your Client’s proposals (on a without prejudice basis), they are concerned about the breaches by Furahia Africa on the subsisting lease. Kindly let us know what amounts you hold for transmission from Furahia Africa to our Clients as lease payments.”
90. According to the Landlords, it is clear that they were not accepting the Claimant herein as a tenant and it was to remit to them any and all moneys from Furahia Africa Ltd as intimated owing as back rent.
91. As the settlement of whatever negotiations between Furahia Africa Limited and Leo Investments Ltd about the takeover of the debt to the landlords were ongoing, they did not enter into any written agreement with Leo Investments as any entry of the said Claimant on their land would contravene the Lease as no assignment had been effected.
92. By an email of 13th July 2016 from the Landlords’ Advocates to Furahia Africa Limited Directors, they informed them that if the Claimant herein Leo Investments had agreed to transmit what was due from Furahia Africa Limited as back rent to the Landlords was effected and the Surrender of Lease executed, they would then consider a written agreement with Leo Investment.
93. In the same breath, a new law firm called Mohammed & Madhani Advocates appeared and stated by a letter dated 2nd August 2016 that they were acting under instructions of the Claimant herein, Leo Investments Ltd who was therein christened as “Intended Tenant”. The said law firm was seeking for a written contract of Lease with the Landlords over the suit property, and was not a tenant.



94. As the back rent from Furahia Africa Limited was not remitted over the suit property usage, the Respondents instructed their advocates on record to demand for vacant possession of the suit property by the said Lessee.
95. In early October 2016, Furahia Africa Ltd informed the Respondents that they agreed that Leo Investments Ltd would pay on their behalf, the outstanding rent. As it was clear there was no tenant-landlord relationship being created, they received the said back rent as per the advice of Furahia Africa Ltd.
96. The Respondents asked Furahia Africa Ltd to formalize this arrangement due to the problems of executing against a third party for non-remittance of the rent and by a letter dated 3rd November 2016, the Lessee's Advocates, Kipkenda & Co. Advocates informed them as follows:
- “ Our Client has advised that it has now found a suitable assignee for the Lease. We have also been advised that the assignee has met your client and are in the process of negotiating a new Lease for execution. The copy of letter of offer to your Client is herewith attached. Please do let us have your confirmation of acceptance of the aforementioned offer of your clients.”
97. The Respondents contend that they did not accept imposition of the Claimant on them, as Furahia Africa Ltd apparently had a side agreement with the Claimant herein unknown to them. As no full back rent was remitted, by Furahia Africa Ltd to them, the Respondents contend that they instructed their Advocates to write to former's Advocates and by a letter dated 16th February 2017 informed them that without a Surrender Of Lease there was no way the Claimant herein would have a written agreement to be on the suit property.
98. Without any disclosure to the Respondents on what Furahia Africa Ltd and the Claimant herein had agreed upon, the former noticed that the Claimant was then purporting to carry on the business of Furahia Africa Ltd on their land without their consent or approval.
99. From Mid-2017 to late 2017, Furahia Africa Ltd went silent and the Respondents started noticing the Claimant seeking to entrench itself without paying rent at all.
100. The Respondents received a letter dated 8th November 2017 from new Advocates known as Mitey & Co. Advocates stating that they acted for Furahia Africa Ltd in respect of the suit property rent arrears. The said letter was copied mysteriously to the Claimant's Advocates, Mohammed & Madhani Advocates.
101. By another letter dated 29th November 2017, the same Law firm of Mitey & Co. Advocates wrote to the Landlords again stating they acted for Furahia Africa Ltd in respect of the suit property rent arrears, and sought for 10 days to clear. As the said Lessee Furahia Africa Ltd defaulted in meeting the terms of the Lease, the Landlords could no longer tolerate the guise of the Claimant paying on behalf of Furahia Africa Ltd the rent due without any Lease agreement.
102. On 9th August 2018, the Respondents filed Narok Elc No. 55 of 2018 seeking to evict the said Furahia Africa Ltd from the suit land and indeed paid the Court fees and the matter was due for Judgement in Narok by the time of recording the initial witness statement.
103. As the said Furahia Africa Ltd were still in the premises, the Landlords sought to levy distress against them and hence the instructions to Sanjomu Auctioneers dated 4th February 2020 and the resultant Proclamation. According to the Landlords, the order of this Tribunal dated 26th March 2020 which was extended on the 4th June 2020 was wrongly issued as they were the ones who were in possession of the suit property known as Narok/cis-mara/lemek 173, situate in Narok County.



104. The Respondents therefore contend that no Landlord-Tenant relationship exists as between them and the Complainant as would found or base a Claim under the statutory ambit of this Honourable Tribunal to intervene or issue any orders in favor of the Claimant.
105. Through the supplementary witness statement, the 1st Respondent avers that on 9th August 2018 they filed Narok Elc No. 55 of 2018 seeking to evict Furahia Africa Ltd from the suit land and that Judgement had been delivered.
106. A decree in the matter was issued to them on 28th September 2022 and according to them, this Honourable Tribunal cannot in the circumstances render itself on any issue that would in its effect supersede the ELC Court's decision.
107. It is the Respondents' contention that the Claimant's cause of action (if any) lies with Furahia Africa Ltd and not against them.
108. The 1st Respondent concludes his witness statements with a contention that the Claimant fraudulently lied that it is in possession of the suit property Narok/cis-mara/ Lemek/173 as alleged tenants of the suit property when it is not, and that there is no tenancy agreement at all which it produced in proof of the alleged tenancy thereof, and to date he has none.
109. In its submissions, the Tenant/Applicant contends that the business run by the Tenant was a hotel. From the testimony of the Complainant / Tenant's witness, Jackline Kendi Kimathi, there existed an apparent intention by the Tenant and the Landlord to enter into a lease agreement over the suit property known as CIS-Mara /Lemek/173.
110. Evidence of an agreed meeting and the concurrence of mind between the Landlord and the tenant can be deduced from the email dated the 2nd of January 2016 at page 8 of the Tenant's bundle dated 14th October 2024, Pages 15-20 of the Tenant's further list of documents contains correspondence with regards to rent payment. Page 3 of the Tenant's list of documents contains the demand by the Landlords to the Tenants with regards to rent increment.
111. The cheques towards payment of rent by the Tenant were produced as exhibit 2 by the tenant's witness during the hearing of the case. The said cheques were not disputed by the landlords although in their defence they claimed that Leo Investments had made the said payments to them on behalf of Furahia Africa Ltd. There was however no document presented in court to support such an arrangement between Leo Investments, Furahia Africa Limited and the landlords. Equally, the landlords failed to explain to court as to what Leo investments were getting out of such an arrangement.
112. It is further submitted that if at all there ever existed such an arrangement. it is because of the understanding and the arrangement between the tenant and the landlords to have the tenant occupy the premises and operate the hotel that the tenants were okay in doing improvements on the premises as they continued paying rent as tenant without necessarily having the said agreement reduced into writing. It is equally for the same reason that the landlords never filed a case of trespass by the tenant on the suit land to obtain orders of eviction against it despite the alleged illegal occupation of the premises and knowledge that the said tenant was in occupation of their premises all along.
113. It is submitted that failure by the landlords to issue a tenancy agreement to the tenant was the landlords' own creation so as to benefit twice both from the tenant and Furahia Africa Ltd against whom they had filed a case which was still pending in court.
114. Deductively and from the above referenced pieces of evidence, it can logically be concluded that the Landlords had full knowledge of the presence of the Complainant as a tenant on their premises and



that the arbitrary manner in which the Landlords increased the rent of the premise points to the fact that there existed no formal agreement in writing as to how rent would be increased. There existed no tenancy agreement in writing and the oral nature of the tenancy fell within the definition of Section 2 of Cap 301 and as such, the tenancy is controlled.

115. It is equally not in contention that the Landlords instructed Sanjomu Auctioneers to levy distress for rent by attachment and the said Auctioneers proclaimed the Tenant by a notice of Proclamation dated the 6th February 2020. The Notice of Proclamation was produced as Exhibit 4.
116. Additionally, through the Application dated the 24th March 2020, the Tenant sought for orders against the Landlord and its Auctioneers on account of their threat of proclamation and subsequent attachment of its properties. The said orders were issued by this Court against the landlords.
117. In their submissions, the Respondents contend that upon the default of the Lessee Furahia Africa Promotions Ltd failing to remit the rent arrears and rent due, Clause 4 of the Lease Agreement with Furahia Africa Promotions Ltd was set in motion.
118. By reason of Clause 5 of the said Lease Agreement when the rent arrears stood unremitted, the Respondents lodged suit in Narok ELC Court vide Narok ELC court case no. 55 of 2018. The Respondents produced a copy of the Judgement and the Decree in this matter from the Narok ELC Court, and at paragraph (c) of the ELC Court's decree, the court ordered as follows: -

“c) A permanent injunction do issue restraining the Defendant, by itself, its invitees, servants, agents, licensees, and/or tenants or otherwise howsoever from trespassing, remaining upon, occupying, leasing, licensing, letting for a peppercorn fee or any other fee, constructing upon, carrying on any form of business, or otherwise howsoever dealing in the Plaintiffs' parcel.”

119. It is instructive to note that the Respondents successfully challenged the validity of the lease agreement in the said case on the basis that it lacked the Narok South Land Control Board Consent and was therefore null and void and amounted to actionable trespass. They were granted an order for cancellation of the encumbrances registered on 13th November 2012 in favour of Furahia Africa Limited as lessee (see the plaint on pages 69-74 of their list of documents dated 24th July 2022 and the judgement and decree on pages 5-21 of the supplementary witness statement dated 4th October 2022).
120. The Respondents cannot therefore turn around in this case and seek to rely on the invalidated lease agreement to nullify the oral tenancy agreement entered into with the Tenant/Applicant herein having accepted to receive rent from it and having stood by as the Applicant effected improvements thereon and operate the hotel in exclusion of Furahia Africa Limited. The Respondents are estopped from denying the arrangement entered into with the Tenant herein and we find and hold that there exists a controlled oral tenancy between them.
121. In regard to the doctrine of estoppel, we rely on the decision in the case of Titus Muiruri Doge Vs Kenya Canners Ltd (1980) eKLR, wherein the Superior Court had the following to state; -

“The ratio of all these cases simply is this – and this is what I say:

“If a party is made so to believe in a certain state of facts and that party acts on those facts, to his detriment, and the other party stands by and does not stop him from so acting, that other party is estopped from changing his stand. If one says to A “go ahead, this is land, but



you may build on it, spend money, we will go into formalities of transfer later' and A does all that, the representor is estopped from denying the right accrued to and acquired by A".

122. The foregoing position is codified under Section 120 of the [Evidence Act](#), Cap 80, Laws of Kenya which provides as follows; -

“When one person has by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he or his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing”.

123. As observed in paragraph 14 of this judgement, when the tenancy dispute arose between the Tenant and the Respondents herein leading to the filing of Narok Elc Case No. 55 Of 2018 by the latter, the Respondents raised a preliminary objection stating that the dispute was in the nature of a landlord/tenant relationship which fell squarely within the ambit of Cap 301. As a result, the said case was struck out and the Tenant was directed to file suit before this Tribunal. They cannot now turn around to say that there is no controlled tenancy between them and the tenant herein as that would amount to approbating and reprobating which is untenable in law. The doctrine of issue estoppel and res judicata applies to prevent them from resiling on their previous position in the said case.
124. The Respondents cannot either turn around and seek to deny the presence of the Tenant on their land and the fact that it effected massive renovations and improvements thereon without any objection by them or any legal action by way of suit or otherwise. The tenant upon taking possession of the suit premises went ahead to even change the name of the hotel from Mara Wildebeest Lodge to Mara Concord Game Lodge. Does it mean that the Landlords were not seeing all this happening and were not aware of the Tenant's presence on their land?
125. According to the Respondents, the hitherto Lessee of the suit property, Furahia Africa Promotions Co. Ltd abandoned the suit property and gave up the Lease. As submitted, there was no written agreement between the Respondents and the Claimant herein over the alleged use of the suit property.
126. This is no doubt a corroboration of the Tenant's contention that the property was abandoned when it took over and undertook extensive renovations and started paying rent to them as evidenced by various cheques and email correspondence without entering into any formal agreement thus bringing the arrangement within the meaning and interpretation of a controlled tenancy under Section 2(1) of Cap 301, Laws of Kenya.
127. According to the Respondents, the Claimant could not introduce oral evidence to create a non-existent tenancy to overlap, supersede or dislodge the registered lease over the suit property in favour of Furahia Africa Promotions Ltd. They cite Section 97(1) of the [Evidence Act](#), Cap 80 of the Laws of Kenya.
128. It is submitted that although the Claimant alleged that it is a tenant of the Respondents on the parcel of land known as Narok/cis- Mara/lemek/173, it had neither a registered Lease nor any form of agreement with the Respondents in proof of its claim contrary to Section 25(1) of the [Land Registration Act](#). However, under Section 2(1) of Cap 301, there is no requirement for a tenancy agreement to be in writing.

ISSUE (b) Whether the notice served upon the Applicant is valid in law.



129. Section 4(2) of Cap 301, provides as follows; -

“(2) A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.”

130. Regulation 4 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Tribunal) (Forms and Procedure) Regulations, 1966 provides as follows; -

1. A notice under section 4(2) of the Act by a landlord shall be in Form A in the Schedule to these Regulations.”

131. In the case of Manaver N. Alibhai T/a Diani Boutique – Vs- South Coast Fitness & Sports Centre Limited Civil Appeal No. 203 Of 1994, it was held as follows;

“The Act lays down clearly in detail, the procedure for the termination of a controlled tenancy. Section 4(1) of the Act states in very clear language that a controlled tenancy shall not terminate or be terminated and no term or condition in or right or service enjoyed by the tenant of any such tenancy shall be altered otherwise than in accordance with specified provisions of the Act. These provisions include the giving of a notice in the prescribed form. The notice shall not take effect earlier than 2 months from the date of receipt thereof by the tenant. The notice must also specify the ground upon which termination is sought. The prescribed notice in form A also requires the landlord to ask the tenant to notify him in writing whether or not the tenant agrees to comply with the notice.”

132. We have no hesitation in finding that the notice served upon the tenant is not in the prescribed form and does not conform with the dictates of Section 4(2) of Cap 301, Laws of Kenya. It is therefore invalid and of no legal consequence.

ISSUE (c) Whether the distress levied against the Applicant is lawful.

133. The Landlords herein maintained throughout the instant proceedings that there was no landlord/tenant relationship between them and the Applicant. However, on 4th February 2024, they instructed Sanjomu

Auctioneers to proclaim the Tenant’s property on the suit premises

claiming for rent arrears amounting to Kshs.14,921,706/=. A proclamation notice was issued in that regard on 6th February 2020. The proclamation was issued in the joint names of Furahia Africa Ltd and Leo Investments Ltd T/a as Mara Concord Game Lodge.

134. During the hearing of this case, the Landlord maintained that they had no tenancy relationship with the Tenant/Applicant. It is to be noted that at the time of instructing the said Auctioneers, there was a pending suit against Furahia Africa Ltd vide NAROK ELC CASE NO. 55 OF 2018 seeking inter-alia for recovery of Kshs 6,000,000/= against the said Company. The Applicant herein was not a party to the said case and no leave of this Tribunal or any other court was sought to warrant the distress. Consequently, there was no legal justification for maintaining such an action and we therefore find and hold that it was unlawful, null and void.

ISSUE (d) Whether the Applicant is entitled to the reliefs sought in the reference/complaint dated 24th March 2020.



135. We have already found that there exists a controlled tenancy between the Applicant and the 1st and 2nd Respondents herein. We have also found that the notice of termination of the tenancy is not valid. We have further found that the distress for rent levied against the Applicant was unlawful, null and void.
136. The Applicant testified that it took up the suit premises after evaluating the offer given to them by the 1st and 2nd Landlords, they ultimately agreed to accept the offer on condition that they were to renovate the premises and elevate the same to the level that could compete favourably with related businesses within the area. The said renovation was contributed to by the fact that the premises was at the time seriously dilapidated because of neglect by the former tenants. It was also agreed that due to the poor state of the enterprises, the Tenants would take some time to renovate the buildings, market the hotel, add other facilities and generally do a facelift that would make the hotel attractive to the customers.
137. In the intervening period it was agreed that the Tenant would pay Kshs,150.000/= to the 1st and 2nd Landlords which amount they were to share equally. Having settled on the above -mentioned terms verbally with the Landlords, they embarked on the renovation of the premises which saw the following constructions and purchases:
- i. Swimming pool
 - ii. Upgrade of the staff quarters.
 - iii. Drivers' rooms.
 - iv. New beds for 50 rooms.
 - v. Renovation of toilets.
 - vi. Installation of power generators.
 - vii. Two-line fencing which included an electric fence to prevent wild animals from accessing the premises.
 - viii. Purchase and installation of new gym equipment.
- Among other investments.
138. Having done all these renovations and purchases, the Tenant intensified the marketing of the new hotel and in the meantime religiously paid rent directly to the Landlords as agreed verbally between them in the presence of their respective Counsel.
139. After all these concerted efforts from the Tenant's end, the business began to pick up and customers started flowing in. The Landlords on seeing this progress began to act unreasonably by increasing rent unjustifiably. In 2018 they increased the rent from Kshs. 150,000/= to Kshs. 200,000/= and in 2019 they also increased the rent from the Kshs. 200,000/= to Kshs.250.000/=.
140. Besides. the aforementioned unreasonable and unexplained rent increments which the Tenant took in stride, the Landlords demanded that they would be entitled to 10% of the income received. The Tenant was uncomfortable with this demand and politely declined to yield to the request.
141. The Landlords then demanded that since the running rent was by then Kshs. 250,000/=, they would then assume that the rent from the time the Tenant took over the premises was meant to be Kshs. 250,000/= and as such it should pay the balance which was calculated to be Kshs.5,000,000/= by the time they made the demand. Since that was not part of the agreement between them, the Tenant similarly asked them politely to shelve the said demand.



142. The Landlords then lowered the demand of Kshs. 5,000,000/= to Kshs. 2,000,000/= via an undated notice which was delivered to the tenant on 15th day of January, 2020, but the Tenant still felt that this demand was outside the realm of the agreed terms.
143. When the Tenant declined to honour the demand by the Landlords to pay Kshs. 2,000,000/=-, the Landlords hired goons who went and vandalized the premises thereby causing the Tenant's business to shut down. The Landlords then subsequently, through their advocates on record instructed an Auctioneer to proclaim the Tenant's property on the premises for a ghost rent arrears amounting to Kshs. 14,921,706/=-.
144. The Landlords paralyzed the Tenant's business which had already picked up because of alleged greed and illegal attempts to unjustifiably increase rent and earn more than what is reasonable in the circumstances. It is against the foregoing circumstances that the Tenant approached the Environment and Land Court and finally this Tribunal for redress.
145. In view of the foregoing, we have no hesitation in finding that the Applicant is entitled to the reliefs sought in its reference and since the Tenant was not allowed to remove or secure the properties that were in the premises, it is entitled to compensation for the full value of the improvements effected thereon under Section 12(1)(i) of Cap 301 which gives this Tribunal power to award compensation as follows; -

“(l) to award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill, and improvements carried out by the tenant with the landlord's consent.”

146. It is therefore our finding that the Landlords cannot benefit from the illegal status quo created through invasion of the suit premises using Masai morans as pleaded by the Tenant/Applicant and they are therefore liable to compensate it for the loss incurred pursuant thereto.
147. In view of the nature of this case, we shall issue a preliminary decree in terms of Section 2 of the Civil Procedure Act, Cap 21, Laws of Kenya in regard to assessment of the value of movables and immovable improvements effected on the suit premises by the Tenant/Applicant in line with the court of appeal decision in the case of *Weston Gitonga & 10 Others Vs Peter Rugu Gikanga & Another* (2007) eKLR wherein the said legal provision was discussed at paragraph 32 as follows; -

“A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final”.

Addressing a similar provision in the Indian Civil Procedure Code, Mulla at page 12 of the 13th edition states:

“A preliminary decree is one, which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then as a result of the further enquiries conducted pursuant to the preliminary decree, the rights of the parties are finally determined and a decree is passed in accordance with such determination.”

148. Should the movable assets/properties be found missing from the suit premises or damaged, the 1st and 2nd Respondents shall pay to the Tenant/Applicant, their replacement cost to be assessed by an independent valuer appointed by the Institution of Surveyors of Kenya.



Issue (e) Who is liable to pay costs of the reference?

149. As regards costs, the same are in the Tribunal's discretion under Section 12(1)(k) of Cap. 301, but always follow the event unless for good reasons otherwise ordered. We shall award costs of the reference to the tenant/applicant being the successful party.

C. Orders

150. In view of the above analysis, this Tribunal issues a preliminary decree against the Respondents in the following terms;
- a. The purported Fourteen (14) days' notice given by the Landlords/Respondents to the Tenant/Applicant is unlawful, illegal, null and void ab initio.
 - b. It is hereby declared that the Tenant was not in any arrears of rent as of 31st January, 2020 and is not liable to pay any further rent with effect from 1st February, 2020 when the Landlords forcefully stopped the operations of the Game Lodge.
 - c. The Proclamation and Distress by the Landlords through Sera Njoki Munge t/a Sanjomu Auctioneers carried out on 6th February, 2020 is illegal, hence null and void ab initio and contrary to the laid down procedures and is hence of no effect.
 - d. The Tenant/Applicant shall be granted unlimited right of ingress and egress by the Landlords/Respondents into and from the Game Lodge Premises situate on the 1st and 2nd Respondents' parcel of land known as CIS-Mara/lemek/173 within Masai Mara Game Reserve for purposes of: -
 - i. Taking a full inventory of its moveable properties held at the premises and valuation of the same by an independent valuer appointed by the Institution of Surveyors of Kenya, who shall ascertain their full value and file a report with this Tribunal.
 - ii. For the valuation of all the immovable developments undertaken by the Tenant/Applicant in the premises with the full knowledge and consent of the Landlords/Respondents by an independent valuer to be appointed by the Institution of Surveyors of Kenya who shall establish their full value and file a report thereof with this Tribunal.
 - e. The Tenant/Applicant is granted the right to remove from the Game Lodge Premises situate on the 1st and 2nd Respondents' parcel of land known as Cis-mara/lemek/173 within Masai Mara Game Reserve all its moveable goods therefrom upon valuation and taking an inventory thereof.
 - f. Should the movable assets/properties be missing from the suit premises or damaged, the 1st and 2nd Respondents shall pay to the Tenant/Applicant, their replacement/market cost to be assessed by the independent valuer appointed by the Institution of Surveyors of Kenya.
 - g. The Ocs, Narok Police Station to grant the tenant and the Valuer security and ensure compliance with these orders.
 - h. The Tenant is granted general damages for trespass to property under Section 12(4) of Cap 301, assessed at Kshs 2,000,000/= against the Landlords' in respect of the illegal and unlawful acts.



- i. The valuation report for the movable and immovable properties shall be filed before this Tribunal for consideration and issuance of a final decree in this matter.
- j. The Tenant/Applicant is awarded costs of the reference to be assessed by the Deputy Registrar of this Tribunal.

It is so ordered.

JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF NOVEMBER 2024

HON. GAKUHI CHEGE (PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON. JOYCE AKINYI OSODO (MEMBER)

In the presence of:

Harrison Kinyanjui for the Landlords/Respondents No appearance for the Tenant/Applicant

