



**Wamunyu v Karuma & another (Tribunal Case E893 of 2023)
[2023] KEBPRT 689 (KLR) (6 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 689 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E893 OF 2023
P KITUR, MEMBER
SEPTEMBER 6, 2023**

BETWEEN

SOPHIA NGINA WAMUNYU TENANT

AND

DAVID MAINA KARUMA LANDLORD

AND

ALBERT MURIUKI AGENT

RULING

A. Parties And Background

1. The Landlord is the owner of all that property known as L.R No. 14284 – Ngoingwa Thika Sub-county.
2. The Tenant herein carries on business on ground floor of the said property as a Tenant to the Landlord.
3. The Landlord is represented by the firm of Chiuri & Chiuri Company Advocates.
4. The Tenant is represented by Waweru Nyambura & Company Advocates.

B. The Dispute Background

5. The Landlord and the Tenant entered into a Lease Agreement dated 4th October 2018 for shop D on the ground floor of the suit premises for a term of five years, three months commencing 1st September 2018.
6. The tenancy continued uninterrupted until 13th September 2023 when the Tenant filed a complaint against the Landlord under s. 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), cap 301.



7. The Landlord additionally filed an Application dated 13th September 2023 with several prayers that I will not reproduce.
8. In response, the Landlord filed a Replying Affidavit sworn on 6th October 2023 alongside a Notice of Preliminary objection of even date raising the following points of law;
 - i. That the suit is improperly before the Tribunal as it offends the provisions of Section 2 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), as the Tenancy is for a fixed period of 5 years and 3 months starting 1st September 2018.
 - ii. It is a non- starter and an abuse of Court process.
9. Parties took directions and agreed to dispose of the Notice of Preliminary Objection by way of Written Submissions which were duly filed by both parties.

C. List Of Issues For Determination

10. Having given full consideration to the Preliminary Objection raised, the issue for determination is;
 - i. Whether this Tribunal has Jurisdiction to hear and determine the matter by dint of section 2 of the Landlord and Tenant (Hotels, Shops and Catering Establishments) Act.

D. Analysis And Findings

12. Jurisdiction is everything and once challenged, a determination should be made before the Tribunal can proceed with further disposal of any matter thereto. The Tribunal has no option but to down its tools where want of jurisdiction is deemed or assumed not to exist. In the case of Owners of the Motor Vessel ‘Lillian’ (s) versus Caltex Oil (Kenya) Ltd [1989] KLR1, the Court stated as follows:

Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion
13. The question therefore arising is whether there exists a tenancy relationship between the Tenant and the Landlord subject to the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#).
14. Under Section 2 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), a 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 date thereof OR
 - iii. Relates to premises of class specified under subsection (2) of this section.
15. The Tenancy Agreement availed before this Tribunal shows that the Tenancy is to run for a period of five years, 3 months. This is apparent on the face of the Tenancy Agreement.



16. A reading of the Tenancy Agreement however discloses the following passage under Clause 17;

Further to this, either party hereto may give notice to terminate lease provided that such party has given at least Two (2) Calendar Month/s Prior Notice in writing to the intention of such party to do so.

17. The above clause is a clear provision for termination otherwise than for breach of covenant at any time during the pendency of the Lease.

18. From the foregoing, the Tenancy herein can properly be termed as a controlled tenancy, whose effect thus is that the Tribunal has jurisdiction over this matter.

Orders

19. I therefore proceed to order as follows;

- a. The Landlord's Preliminary Objection is hereby dismissed.
- b. Mention on 2nd January 2024 for directions with regard to the Notice of Motion dated 13th September 2023.
- c. Costs shall abide the outcome of the Reference.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR THIS 6TH DAY OF SEPTEMBER 2023

HON P. KITUR

BUSINESS PREMISES RENT TRIBUNAL

In the presence of

Wambugu H/B for churi for the landlord and

No appearance for the tenant.

