



**Eco Sea Products Limited v Jeremiah K. Muchendu t/a Icon Auctioneers & another  
(Tribunal Case E784 of 2024) [2024] KEBPRT 1445 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1445 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E784 OF 2024  
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER  
SEPTEMBER 18, 2024**

**BETWEEN**

**ECO SEA PRODUCTS LIMITED ..... APPLICANT**

**AND**

**JEREMIAH K. MUCHENDU T/A ICON AUCTIONEERS ..... 1<sup>ST</sup> RESPONDENT**

**LORNA ADHIAMBO OGEMBO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This court found it appropriate to give directions in this matter in view of the submissions by the counsels for both the Tenant and the Landlord. In the case of the Tenant, he vouched for the grant of the orders sought in its application dated 9<sup>th</sup> September 2024.
2. In principal the Tenant/Applicant sought that the landlord be restrained by way of injunction from evicting and or interfering with its quiet enjoyment and possession of the premises pending the hearing and disposal of the Application and reference herein.
3. It also sought that all the goods attached by the Auctioneers be returned and that it be allowed to continue paying rent as usual pending hearing of the application herein.
4. Mr. Mathini for the Tenant also submitted that despite orders of this court, the landlord had failed to comply with the same and had instead moved a magistrate's court through a miscellaneous application and where orders to levy distress had been granted.
5. On his part, Mr. Onyango Counsel for the Landlord submitted that the orders alleged by the Tenant to have been defied by the landlord had lapsed naturally 7 days after the 9/8/2024 for non-compliance. He submitted that the landlord had since re-entered and taken possession of the demised premises.
6. To the counsel, such re-entry had ousted the jurisdiction of this court. Furthermore, the landlord had entered into a new tenancy agreement that was to take effect on the 1<sup>st</sup> October 2024.



7. According to Mr. Onyango, the landlord had even before the unfolding reality filed two preliminary objections on the question of jurisdiction. The same are dated the 31/7/2024 and the 10/9/2024. To him, even the lease agreement governing the parties dated 30/4/2023 did not fall within the parameters of a controlled Tenancy under Section 2(1) of the Act.
8. To Mr. Mathini, the lease agreement dated 30<sup>th</sup> April 2023 had a drop clause under clause 11 thereof, in that regard, he submitted that this court had the requisite jurisdiction to preside over this matter and oversee its disposal.
9. We would not wish to be heavy on the merits of the issues at hand and those raised by the parties but only ensure that justice is administered at face value pending final disposal of the issues at hand.
10. The only issues that we need to address to enable us give directions that are judicial and fair are on whether the Tenants tenancy has lapsed and whether this court has jurisdiction to hear this matter.
11. From the lease Agreement dated 30/4/2023, the same was to terminate in 10 years of execution effective the 1/5/2023. It is obvious that that term has only had a run of slightly over one year. The question that then arises is whether by the orders issued on the 9/8/2024, the tenancy effectively terminated.
12. In our view, the only rights that accrued to the landlord by the non-compliance of the said orders by the Tenant was the levy of distress. Indeed this court had not been called upon to determine the tenancy and the said orders of 9/8/2024 did not grant the relief of eviction.
13. It therefore follows that to terminate the tenancy, the landlord required to be in complete compliance with Sections 4(2) 4(4), 7 (1) of the Act and Regulation 4(1) of the Regulations to the Act. There is obviously no such compliance. However the landlord is of the view that the landlord and Tenant (shops, Hotels and Catering Establishments) Act (Cap. 301) have no application in this matter. we are not persuaded by that position taken by the landlord.
14. The Tenant in seeking refuge in this court heavily relied on clause 11 of the lease agreement dated 13/4/2023. The same reads as follows:-

“Any party wishing to terminate or give up their rights and/or obligations under this agreement must give a Three (3) months notice which notice shall be in writing”.
15. In our view that is a drop or break clause which was not reliant on the breach of a covenant and therefore fell squarely under Section 2(1) of the Act and thus a controlled Tenancy within the jurisdiction of this court.
16. For ease of clarity, section 2(1) of the Act provides that:-

“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 commencement thereof”.
17. Clause 11 of the lease agreement dated 30/4/2023 gave the parties complete freedom to terminate the same without any breach of covenant. The only requirement was to give the other party three (3)



months notice in writing. It therefore brought the parties relationship under the jurisdiction of this court.

18. The court of appeal has had to speak to a similar situation as is obtaining herein in the case of:-

Khalif Jele Mohammed & Another

Vs

The Republic & Antoher (2019) e KLR where it held that:-

“In the present case, the termination clause was a blanket provision that gave liberty to the parties to terminate at any time and for any reason within the 6 years term of the tenancy. In effect, it could be invoked by either party and either party could terminate the tenancy within 5 years of the term or even 5 years after commencement of the Tenancy. In effect, as worded, the termination clause did not exclude termination of the tenancy within 5 years of the term. It was infact permissive of termination within 5 years from the commencement of the tenancy. To that effect we are satisfied that the termination as worded brought the tenancy within the meaning of a controlled tenancy under section 2(1) (b) (ii) of the Act. Consequently, the Tribunal was clothed with jurisdiction over the matter”.

19. We need not say more on that question only to add that in view of the above and of the provisions of 2 (1) of Section the Act on the definition of a Tenant, then the purported re-entry by the Landlord into the demised premises was in vain and of no effect nor consequence as such was in breach of the Act. The definition is to the effect that:

“ A 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”.

20. In that regard, the Tenant herein is entitled to the demised premises whether or not he is in physical occupation of the premises. That is the plain import of Section 2(1) of the Act.

21. We therefore give he following directions on this matter:-

- i. That the tenant shall be allowed quiet possession of the demised premises known as House No. 72 along UN Cresent Gigiri which house is comprised in a Title registered as NAIROBI/ BLOCK 91/72 pending hearing interpartes and Ruling on the Applications dated 25/7/2024 and 9/9/2024 and the notices of preliminary objection dated 31/7/2024 and 10/9/2024.
- ii. That the parties shall file and exchange any responses and supplementary affidavits and documents if need be within 21 days of the date hereof.
- iii. That we shall mention this matter on the 14<sup>th</sup> October 2024 to confirm compliance and take further directions on the disposal of the same.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**HON. NDEGWA WAHOME**

**PANEL CHAIRPERSON**

**HON. JOYCE MURIGI**

**MEMBER**

**BUSINESS PREMSIES RENT TRIBUNAL**

Mr. Onyango present for the Respondent



Mr. Mathini present for the Tenant

**HON. NDEGWA WAHOME, MBS**

**PANEL CHAIRPERSON**

**BUSINESS PREMSIES RENT TRIBUNAL**

**HON. JOYCE MURIGI**

**MEMBER**

**18<sup>th</sup> September 2024**

Mr. Onyango: I seek for stay of the Ruling and leave to appeal.

Mr. Mathini: We object to the application for stay.

Court: The Landlord as a matter of right can appeal the Ruling of the Tribunal. In the meantime, we do not think reasonable to stay this tribunals Ruling. It would be a kin to allowing perpetration of what we have found to be in breach of the law. The application for stay is therefore respectively declined.

**HON. NDEGWA WAHOME, MBS**

**PANEL CHAIRPERSON MEMBER**

**BUSINESS PREMSIES RENT TRIBUNAL**

**HON. JOYCE MURIGI**

**MEMBER**

**18<sup>th</sup> September 2024**

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