



**Equip Agencies Limited v Ramis Properties Limited (Tribunal Case
E296 of 2024) [2024] KEBPRT 664 (KLR) (21 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 664 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E296 OF 2024
A MUMA, MEMBER
MAY 21, 2024**

BETWEEN

EQUIP AGENCIES LIMITED TENANT

AND

RAMIS PROPERTIES LIMITED LANDLORD

RULING

A. Parties And Their Representatives

1. The Applicant Equip Agencies Limited is the tenant and rented space on the suit premises being Go-Down number 5 located at Ramis Centre situated on Land Reference No. 209/9719(“the suit property”) belonging to the Respondent herein. (hereinafter the “tenant”).
2. The firm of Odero and Partners Advocates appear for the Tenant in this matter.
3. The firm of Okeyo appears alongside Odero for the Tenant.
4. The Respondent Ramis Properties Limited are the Landlords and the proprietors of the suit property. (hereinafter the “landlord”)
5. The Firm of Gikera & Vadgama Advocates represent the respondent in this matter.

The firm of Odero and Partners made efforts to arrest the ruling on grounds that the firm of Okeyo had no instructions to represent the Tenant in this matter; to save on Judicial time and since the ruling was not adverse to the Tenant at this PO stage the court urges the parties to sought out the issue of representation before the hearing of the main suit and application together. From the proceedings it appears both firms have been appearing alongside each other and no evidence was tabled in all the occasions pointing at lack of instructions on the part of any counsel even though I take note that the firm of Odero and Partners filed the matter and there is no Notice of Change of Advocates to the firm



of Okeyo in the physical file I was unable to check the e portal cause of downtime but again I urge parties to try and sort out the issue of representation so we get to the substratum of the matter.

B. The Dispute Background

6. The current suit was instituted by the tenant vide a Reference and a Notice of Motion Application under Certificate of Urgency dated 26th February 2024 under Section 12(4) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301. The tenant was seeking orders restraining the landlord from interfering with their quiet occupation of the suit property. Additionally, the tenant wanted an order restraining the respondent from charging any other rent other than ground rent at the market rate.
7. The Respondents have filed a Preliminary Objection dated 15th March 2024 in opposition to the Tenant's Application where they put to question the Jurisdiction of this Tribunal to deal with the matter on the grounds that the Lease Agreement between the parties is for a term of more than 5 years.
8. The Landlord has additionally filed a Replying Affidavit dated 15th March 2024 where they affirm the grounds of the Preliminary Objection as well as bring to light other issues such as the tenant being in arrears as the reason for them interfering with their possession.

C. Jurisdiction

9. The jurisdiction of this Tribunal is in dispute.

D. The Tenant/applicant's Claim

10. The Tenant filed a Reference and a Notice of Motion application under Certificate of Urgency and supporting affidavit dated 26th February 2024 seeking orders restraining the landlord from interfering with their quiet occupation of the suit property. Additionally, the tenant wanted an order restraining the respondent from charging any other rent other than ground rent at the market rate.

E. The Landlord/respondent's Claim

11. The respondent has filed a Preliminary Objection where they claim that the Tribunal does not have Jurisdiction to determine the issued raised in the Tenant's Application on the grounds that the Lease Agreement between the parties is for a term exceeding five years.

F. Issues For Determination

- a. Whether the Tribunal has the requisite Jurisdiction to hear and determine the issued raised in the Tenant's Reference and Application?

G. Analysis And Determination

12. The tenant approached this Tribunal seeking restraining orders to prevent the landlord from interfering with their quiet occupation of the premises.
13. The tenant alleges that the basis for seeking the said orders was that the landlord had been interfering with their quiet occupation and had gone further to deny them access to the suit property.
14. The landlord responded through filing a Preliminary Objection which questions the Jurisdiction of this Tribunal on the grounds that the Lease Agreement between the parties is for a term exceeding 5 years. They claim that the same is for a period of 5 years and one day being 15th July 2021 to 15th July 2026.



15. In the locus classicus of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd. (1989)*, in this subject, this Court pronounced itself as follows:

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

16. Further, in the case of *Joseph Muthee Kamau & Another v. David Mwangi Gichure & Another (2013) eKLR*, the Court considered the issue of jurisdiction and stated as follows:

“When a suit has been filed in a court without jurisdiction, it is a nullity. Many cases have established that; the most famous being *Kagenyi v. Musirambo (1968) EA 43*. We hold that jurisdiction cannot be conferred at the time of delivery of judgment. Jurisdiction does not operate retroactively. Jurisdiction must exist at the time of filing suit or latest at the commencement of hearing.”

17. Based on the above it is evident that this Tribunal must establish whether or not it is clothed with Jurisdiction before proceeding to determine the substantive issues as raised by the Tenant in the Reference.
18. The landlord claims that the tenant’s application should be struck-out because the Tribunal lacks Jurisdiction.
19. Section 2 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* provides as follows:

For the purposes of this Act, unless the context otherwise requires—

“catering establishment” means any premises on which is carried out the business of supplying food or drink for consumption on such premises, by persons other than those who reside and are boarded on such premises;

“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;

20. Based on the above provision it is very clear that for the Tribunal to have Jurisdiction, if the Lease Agreement between parties is written the same must not exceed five years and if it does, it should contain a provision relating to Termination otherwise than for breach of covenant.



21. In the present case the Landlord has annexed to their replying affidavit the letter of offer dated 24th June 2021 shared with the client which contained the terms that would guide the preparation of the lease agreement.
22. I have perused the said letter of offer and found that the clause named Term provides as follows;
- The term of the lease will be six (5) years and one (1) day effective from 15th July 2021 to 16th July 2026 and thereafter with an option to renew for a further period of five (5) years and one (1) day as per same terms and conditions at agreeable rate.
23. I also take note that the agreement contains a clause named Notice to Vacate which provides as follows;
- The lessor shall be at liberty to give three (3) months' notice for any breach of the terms and conditions of the lease.
24. Based on the above terms of the agreement it is evident that despite the fact that the term of the lease exceeds five years, the agreement contains the clause on termination and the same is not for breach of covenant.
25. In light of the above, I find that the Tribunal is clothed with Jurisdiction and I therefore proceed to order as follows;

H. Orders

26. The upshot is that the Landlord's Preliminary Objection dated 15th March 2024 is hereby dismissed in the following terms;
- a. The Landlord shall file an updated Statement of Accounts within 14 days as well as any additional documents that they wish to rely on;
 - b. The tenant shall respond to the Landlord's Statement of Accounts in 14 days and also file any additional documents that they wish to rely on;
 - c. Hearing of Tenants Reference on 25th June 2024; IOE
 - d. Costs shall be in the Cause.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by Hon A. Muma this 21st day of May 2024 in the presence of Odero for the Tenants and Okeyo for the Tenants and Munyiva for the Landlord for the Landlord.

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

