



Bamboo Cask Limited v Spacemaster Properties Limited (Tribunal Case E882 of 2023) [2024] KEBPRT 1668 (KLR) (5 November 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1668 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E882 OF 2023
CN MUGAMBI, CHAIR
NOVEMBER 5, 2024**

BETWEEN

BAMBOO CASK LIMITED TENANT

AND

SPACEMASTER PROPERTIES LIMITED LANDLORD

RULING

1. The Landlord's notice of preliminary objection dated 12.9.2024 is brought on the grounds;
 - a. That the lease agreement under scrutiny does not align with controlled tenancy but rather pertains to a commercial lease. The lease term spans five years and three months from 1.04.2019, contravening Section 2(1)(b)(1) of Cap 301 of the Laws of Kenya.
 - b. That the lease agreement does not contain a termination clause other than the provision for the expiry of the lease on 1.07.2024.
 - c. That the Tribunal lacked the jurisdiction to issue the injunctive reliefs it issued as the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 of the Laws of Kenya is not applicable to the Lease Agreement in question.
 - d. That the Applicant lacks any legal title or basis to assert a claim over LR No. 209/22352 as there exists no legal documentation conferring them ownership rights or perpetual access to the said property.
 - e. The Respondent has appealed against the orders of injunction issued against it by the Tribunal and has sought a stay of the proceedings herein.
 - f. That the Application by the Tenant is vexatious and an abuse of the court process.



2. The Landlord has challenged the jurisdiction of the Tribunal to hear and determine this matter. The Tribunal is in the circumstances required to establish at the very earliest opportunity whether indeed it has the jurisdiction to hear and determine this matter.

In this regard, the court in the case of; Motor Vessel M.V. Lillians vs Caltex Oil (Kenya) Limited [1969] LkR 1953, stated as follows;

“Jurisdiction must be acquired before Judgment. It is for this reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on evidence before the court. it is immaterial, whether the evidence is scanty or limited... the moment the court determines that it has no jurisdiction, it has to down its tools and proceed no further.”

3. It is clear from the above holding by the court that the court is entitled to consider the evidence before it in determining whether it has jurisdiction in instances where its jurisdiction has been challenged.
4. The Tenant in its affidavit sworn on 15.8.2024 depones that its previous Landlord was ZAISAL LIMITED on the premises known as L.R. No. 209/1245 NAIROBI, and that the said premises was sold to the current Landlord on the understanding that the Tenant “SHALL continue in the same manner and on similar terms between the company and the previous Landlord.”
5. The issue to be determined at this point is whether the relationship between the parties herein was governed by a written lease agreement and if so, which lease agreement and what were the terms of the said lease agreement OR if the relationship between the parties was NON WRITTEN.
6. When the Tenant depones that “it was to continue in the same manner and on similar terms between the company and the previous Landlord,” what constituted “same manner and similar terms?”
7. The Landlord has deponed in its replying affidavit that there exists a binding agreement between the Tenant and the Landlord established vide the deed of variation of the agreement for sale dated 4.11.2021. It is further deponed that the Landlord acquired the premises without vacant possession and the previous owner assigned to the Landlord herein all its rights and obligations under the initial agreement to the Respondents.

Clause 2 of the deed of variation of agreement for sale of land provided as follows;-

“On or before the expiry of the registration period or the Longstop Date as provided in clause 3.4 of the Agreement but in any event prior to the release of the Deposit and Remainder of the Purchase Price to the Vendor, the Vendor or Vendor’s Advocates shall deliver to the Purchaser’s Advocates the letters from the Vendor to the Tenants duly acknowledged by the Tenants as provided in the lease and agreement to lease documents availed by the Vendor on or before 4th March 2022 with respect to the Properties informing them of the sale of the Properties to the Purchaser and obliging them to deal with the Purchaser in the said lease and agreement to lease documents.”

Further, at clause 4 of the deed of variation, it is provided as follows;-

“In consideration of the deduction set out in clause 2.5 above and more particularly the deduction of Kenya shillings twenty-five million Kshs. 25,000,000/=), the Vendor shall not be obliged to deliver vacant possession and has agreed with the Purchaser that the Purchaser



shall purchase the Properties with the Tenants in accordance with the lease and agreement to lease documents availed by the Vendor on or before 4th March 2022...”

8. It is clear and the Tenant’s do admit that they were duly informed of the sale of the suit property to the Landlord herein. It is also clear that the Landlord did not purchase the suit property with vacant possession but rather purchased the property “with the Tenants in accordance with the lease and agreement to lease documents.” This lease agreement is the one dated 20.6.2019 and it forms the agreement referred to at paragraph 7 of the Tenant’s affidavit sworn on 15.8.2024. It is my finding that when the Tenant states at paragraph 7 that it had an agreement to continue in the same manner and on similar terms between the company and the previous Landlord, it referred to the lease agreement dated 20.6.2019 between itself and the previous Landlord and the terms thereof.
9. The parties in the instant suit and particularly their relationship is therefor governed by the said lease and it is incorrect for the Tenant to take the position that the said relationship is not governed by a written lease agreement.
10. Does the lease agreement dated 20.6.2019 give rise to a controlled tenancy? The lease agreement is for a term of five (5) years and three (3) months commencing on 1.4.2019 and according to clause 1(d) the lease agreement was set to expire on 31.8.2024. I have perused the lease agreement and I do agree with the submissions by the Landlord that the lease does not contain a termination clause other than the ordinary contractual breaches of the same agreement. The lease agreement dated 20.6.2019 therefore does not amount to the definition of a controlled tenancy which under Section 2(1) of Cap 301 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 provisions 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 such Section (2) of this Section.
11. It is my finding in these circumstances that the lease agreement that bound the parties to this dispute is for a period exceeding five years, is in writing and does not contain a termination clause other than for a breach of covenant and does not therefore give rise to a controlled tenancy. consequently, the Tribunal lacks the jurisdiction to hear and determine this matter and the Reference filed by the Tenant and the Application filed therewith are hereby dismissed with costs to the Landlord.
12. This file is ordered closed on those terms.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF NOVEMBER 2024

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Kemboi for the Tenant and Mr. Kassam for the Landlord

