



**Realcare Limited v Homeplus Realtors Limited & another (Tribunal
Case E209 of 2024) [2024] KEBPRT 1133 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1133 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E209 OF 2024
P KITUR, MEMBER
JULY 26, 2024**

BETWEEN

REALCARE LIMITED TENANT

AND

HOMEPLUS REALTORS LIMITED AGENT

AND

PYRAMID AUCTIONEERS AUCTIONEER

RULING

A. Parties And Background

1. Homeplus Realtors Limited is an appointed Estate Agent disclosed as managing the Tenancy over premises known as Polychem House erected on Title Number L.R 209/ 136/120.
2. The Tenant herein carries on business in premises located at the said building as a Tenant to the Landlord.
3. The Respondents are represented by the firm of Kimandu Ndegwa & Company Advocates.
4. The Tenant is represented by Kabuthia Kamau & Associates Advocates.

B. The Dispute Background

5. The Landlord and the Tenant entered into a Lease Agreement dated 1st March 2020 for part of the suit premises for a term of six years commencing 1st March 2020.
6. The tenancy continued uninterrupted until sometime in February 2024 when the Landlord, through the Agent and Auctioneer herein commenced the process of distress for rent.



7. The Tenant thereafter proceeded to file a complaint against the Landlord under s. 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, cap 301.
8. The Tenant additionally filed an Application dated 13th February 2024 seeking interim relief
9. In response, the Respondents filed a Replying Affidavit sworn on 23rd March 2024 alongside a Grounds of Opposition dated 22nd March 2024 where they challenged the Tribunal's jurisdiction on among others, the ground that the Lease Agreement as annexed in the Replying Affidavit was for a period of six years, therefore outside the scope of the Tribunal's jurisdiction.
10. Parties took directions and agreed to dispose of the Application by way of Written Submissions which were duly filed by both parties.

C. List Of Issues For Determination

11. Before delving into the issues in dispute arising out of the Notice of Motion dated 13th February 2024, we first have to satisfy ourselves on whether we have jurisdiction to hear and determine this matter.

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 first make a determination whether it is clothed with jurisdiction in the matter. 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 that it is without jurisdiction.

12. 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*.
13. 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.
12. The Lease availed before this Tribunal shows that the Tenancy is to run for a period of Six years from 1st March 2020. The same also does not contain a termination clause otherwise than for breach of covenant at any time during the pendency of the Lease.
13. In Republic v Chairperson - Business Premises Rent Tribunal at Nairobi & another Ex-Parte Suraj Housing & Properties Limited & 2 others [2016] eKLR, the Judge cited with approval the case of



Pritam vs. Ratilal and Another Nairobi HCCC No. 1499 of 1970 [1972] EA 560 where it was stated as follows:

“Therefore the existence of the relationship of landlord and tenant is a pre-requisite to the application of the Act and where such relationship does not exist or it has come to or been brought to an end, the provisions of the Act will not apply. The applicability of the Act is a condition precedent to the exercise of jurisdiction by a Tribunal; otherwise the Tribunal will have no jurisdiction. There must be a controlled tenancy as defined in section 2 to which the provisions of the Act can be made to apply. Outside it, the Tribunal has no jurisdiction.”

12. From the foregoing, the Tenancy herein cannot be termed as a controlled tenancy, which therefore ousts this tribunal’s jurisdiction to hear and determine the dispute.
13. I therefore proceed to order as follows;

E. Orders

- a. The Respondents’ Objection to jurisdiction as raised in the Grounds of Opposition dated 22nd March 2024 is hereby upheld.
- b. The Tenant’s Complaint and Application are hereby struck out.
- c. Costs are awarded to the Landlord assessed at Kshs. 10,000/=.
- d. File marked as closed.

HON P. KITUR

BUSINESS PREMISES RENT TRIBUNAL

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR THIS 26^H DAY OF JULY, 2024

In the presence of Mr. Kamau for the Tenant and the absence of the Respondents.

HON P. KITUR

BUSINESS PREMISES RENT TRIBUNAL

