



Peter Njagi t/a Wamu Hardware v Ahmed & 2 others (Tribunal Case E118 of 2023) [2023] KEBPRT 1144 (KLR) (Civ) (24 November 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1144 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
CIVIL
TRIBUNAL CASE E118 OF 2023
P MAY, MEMBER
NOVEMBER 24, 2023**

BETWEEN

PETER NJAGI T/A WAMU HARDWARE TENANT

AND

YASMIN AHMED 1ST LANDLORD

MARIAM AHMED 2ND LANDLORD

NAIROBI HOMES 3RD LANDLORD

RULING

1. The Landlord's/Respondent's notice of preliminary objection dated 30th May, 2023 challenges the jurisdiction of this Tribunal to hear and determine this matter for the reasons;
 - a. The term of the tenancy was for a period of five years three months and therefore does not fall within the definition of controlled tenancies as set out under section 2 (1) (b) (11) of Cap 301.
2. The Landlord's preliminary objection was filed in response to the Reference dated 16th May, 2023 and the attendant application filed on an even date. The parties elected to canvass the preliminary objection by way of written submissions.
3. I have considered the application, affidavits and the submissions on record and would proceed as follows:

Landlord's position ;

4. The Tribunal has no jurisdiction on leases exceeding five years. The Tenant/Respondent has acknowledged the existence of a lease for five years and two months.



5. It is an established principle that jurisdiction is everything.
6. The Act, Cap 301, at section 2 (1) (b) is in clear terms and leaves nothing to inference.

The Tenant's position

7. The landlord arbitrarily increased the rent and seeks to increase the same further without following the laid down procedure under CAP 301. The actions by the landlord are detrimental to them.

Analysis

8. It is not in contention that the parties entered into a written lease agreement executed on 2nd September, 2022. The issue for determination that arises therefore is, what is the nature of the relationship between the parties created by dint of the lease agreement?
9. Under section 2(1) 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 or
 - iii. Relates to premises of a class specified under subsection (2) of this section.
10. The lease annexed by the Landlord as exhibit FM1 expresses itself to be for a period of five years and three months. I have perused the lease document and it does not contain a clause for termination otherwise than for breach of covenant within five years from the commencement thereof. The preliminary objection herein is challenging jurisdiction based on the term of the lease. The term of the lease is five years and three months and therefore clearly outside the jurisdiction of the Tribunal.
11. I therefore do find that the Tribunal has no jurisdiction to hear and determine this dispute and the Landlord's notice of preliminary objection dated 30th May, 2023 is allowed with costs to the Landlord.
Landlord's costs are assessed at Kshs 15,000/-.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH DAY OF NOVEMBER 2023.

HON. PATRICIA MAY

MEMBER

24.11.2023

