



**Comtrack Africa Company Limited v Rubis Energy Kenya PLC (Tribunal
Case E111 of 2024) [2024] KEBPRT 588 (KLR) (17 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 588 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E111 OF 2024
P MAY, MEMBER
APRIL 17, 2024**

BETWEEN
COMTRACK AFRICA COMPANY LIMITED APPLICANT
AND
RUBIS ENERGY KENYA PLC RESPONDENT

RULING

1. The applicant approached the Tribunal by filing the reference dated 30th January, 2024. The reference sought for orders to reopen the demised premises. The applicant also filed an application under certificate of urgency dated on an even date. The gist of the application is that it sought to protect the subject matter of the dispute through grant of orders of temporary injunction. The application was placed before the Tribunal whereby the applicant was granted interim orders pending the inter- partes hearing.
2. The respondent upon being served with the application, filed an application by way of notice of motion seeking to set aside the interim orders previously issued in favour of the applicant. The respondent stated that the orders granted were final and detrimental to them as they had not been offered an opportunity to be heard. The respondent accused the applicant of obtaining the orders through the backdoor for non- disclosure of material facts.
3. The respondent stated that the applicant had executed a licence which did not confer exclusive rights of occupation or possession and that the said licence was for a period exceeding 10 years thus the Tribunal was divested of the jurisdiction to hear and determine the dispute as it did not fall under the ambit of controlled tenancy as defined under Section 2 of CAP 301.
4. The parties herein elected to have the respondent's application dated 23/2/2024 take precedence and the same was canvassed by way of written submissions. I have considered the submissions and the affidavit on record and wish to proceed as follows:



5. The respondent has disputed that the agreement that was entered herein created a licence which does not fit the definition of a tenancy. The question goes into the jurisdiction of the Tribunal thus the tribunal has to deal with the same before it delves into the merits of the prayers sought by the parties.
6. The question that the Tribunal therefore has to address is whether the parties to the licence agreement intend to create a Landlord/Tenant relationship or a licensee – licensor relationship?
7. The manner in which the parties created the contractual obligations between them is explicit. The respondent sent a letter of offer. The same stated that the licence agreement was for a period of 10 years. The parties thereafter drafted a licence agreement. The said licence agreement has to be interpreted holistically since merely titling a document a licence does not make it a licence. A licence as argued by the respondent does not grant the licensee exclusive rights.
8. The Tribunal has perused the terms of the said agreement. It has particularly paid attention to clauses 4 and 12 on licensee's undertakings and termination respectively. The highlights of the said clauses clearly point to a scenario where the parties clearly intended to create a licence rather than a controlled tenancy. The intention of the parties is express and the Tenant/Applicant clearly knew or ought to have known what she was getting herself into when she executed her part of the licence agreement. It is correct that parties are bound by their own agreements and courts cannot impose their own terms upon such agreements. In any event, the Applicant has not sought a variation of the licence agreement and she confirms it is the only agreement between the parties herein.
9. In the case of Nairobi HCC No. 3424 of 1982, BP Nairobi Service Station Ltd Vs BP Kenya Ltd, the court stated;

“I have carefully examined the transaction the subject of this litigation and the relationship of the parties as it emerges from oral testimony given in court and the relationship of the parties as it emerges from oral testimony given in court and the documentary evidence submitted and come to the conclusion that the Plaintiff did not enjoy exclusive possession of the premises and that such possession as it enjoyed was limited by the substantial degree of control that the grantor continued to exercise of the operations of the station and on the premises themselves. I have carefully examined the agreement dated 24th June 1968 which I have determined to be the document evidencing the relationship between the parties and governing their conduct, terms which clearly suggest that it is intended to create a licence rather than a contractual tenancy.”

10. I am guided by the above pronouncement of the learned judge and do find that the parties herein entered into a licence agreement and the provisions thereof that clearly bound the parties do not provide for a contractual tenancy.
11. It is therefore my finding that there does not exist a Landlord/Tenant relationship between the parties herein, their relationship being that of a licensee/licensor and governed by the licence agreement between the parties.
12. The upshot of the above is that the Tribunal lacks the requisite jurisdiction to hear and determine this dispute. The orders issued on 31/1/2024 are set aside. Consequently, the reference dated 30th January, 2024 is dismissed in its entirety. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF APRIL, 2024.

HON. PATRICIA MAY - MEMBER

BUSINESS PREMISES RENT TRIBUNAL



Delivered in the presence of Gathagu for holding brief for Turunga Ithagi for the Applicant/Tenant
No appearance by the Respondent/Landlord

