



**Vaal Bar and Grill Limited v Sutton Holdings Limited (Tribunal Case E009 of 2024)
[2024] KEBPRT 789 (KLR) (Commercial and Tax) (20 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 789 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
COMMERCIAL AND TAX
TRIBUNAL CASE E009 OF 2024
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
MAY 20, 2024**

BETWEEN

VAAL BAR AND GRILL LIMITED APPLICANT

AND

SUTTON HOLDINGS LIMITED RESPONDENT

RULING

1. These proceedings were originated by the Reference dated 3.1.2024. the same was said to be founded on Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (Cap 301) hereinafter “*the Act*.”

The Tenant’s grievance was that;-

“The Landlord sent goons on the 1st and 2nd January, 2024 and locked the Business Premises with intention to evict us from the business without notice.”

2. Accompanying the Reference was a notice of motion of the same date. Principally, the motion sought that the Respondent be restrained from interfering with the quiet possession of the demised premises by the Tenant, be compelled to allow the Tenant free access to the demised premises and to reconnect utilities thereof. These orders were sought to be enforced by the OCS Rongai police station.
3. On its part and in response to the Applicant’s suit, the Respondent filed a replying affidavit sworn by Aman Kurji said to be a director of the Respondent. The same is dated 14.2.2024.
4. Directions in the matter were taken on the 5.2.2024 to the effect that the Application dated 3.01.2024 would be canvassed by way of written submissions. Subsequent to that, the Tenant filed its submissions dated 28.3.2024 whereas those of the Respondent are dated 12.4.2024.



5. Having perused all the pleadings and submissions by both parties, we proceed to briefly state their respective cases.

A: The Case for the Tenant

6. The Tenant's case was that;-
- i. The Respondent had hired goons to invade the business premises and evict them without notice having been given.
 - ii. The Respondent had locked up the demised premises and disconnected utilities like water and electricity.
 - iii. The actions by the Respondent were not sanctioned by the law and therefore illegal.
 - iv. Its business had started to pick up despite the hard economic times and it was meeting its cardinal obligations of paying rent.
 - v. The actions of the Respondent would cause it massive damages and loss if not stopped.
 - vi. Without a termination notice, the Respondent had no authority to take back the premises. The case of *Jacquiline Kaloki vs Ann Kariuki* [2022] Kebprt 241 (KLR) (Civ) was cited in support.

B: The Case for the Landlord

7. The Landlord on its part asserted that;-
- i. The Applicant was merely issued with a license to operate a business and no Landlord and Tenant relationship was ever established between the parties.
 - ii. The term for the license was for two years which ended on the 31.12.2023- Annexure AK2 is the license agreement.
 - iii. The license to the Tenant would only be extended after the two years on request in writing and which the Tenant never sought for.
 - iv. Tenant was a serial rent defaulter and the license could not have been extended even if he had sought for the same.
 - v. Through its Advocates, the Tenant had by a letter dated 1.1.2024 (Annexure AK-4) acknowledged being in rent arrears at Kshs. 272,800/= and further that the license agreement had expired.
 - vi. That a court of law can only interpret and enforce parties agreements entered into voluntarily and not create same for the parties.

The following cases were cited;-

- a. [*South Nyanza Sugar Co. Ltd. Vs Leonard O. Arera*](#) [2020] eKLR
 - b. *National Bank of Kenya Ltd vs Pipe Plastic Samkolit (K) Ltd* [2002- 2 EA 503, and
 - c. [*Pius Kimaiyo Langat vs Co-operative Bank of Kenya Ltd*](#) [2017] eKLR.
- vii. On the question that there did not exist a landlord and Tenant relationship, reliance was sought from the following cases;-



- a. [*Republic vs Chairperson, Business Premises Rent Tribunal at Nairobi and Another ex-parte Suraj Housing & Properties Ltd and 2 Others*](#) [2016] eKLR where the court cited with approval the case of; *Pritam vs Ratilal & Another* [1072] EA 560.
- viii. That this Tribunal did not have Jurisdiction to try this matter in the absence of a landlord and Tenant relationship and the following case law was cited;-
 - a. [*Harun Kiptarus Tanui vs East African Portland Cement PLC*](#) [2022] eKLR
 - b. [*Equity Bank Ltd vs Bruce Mutie Mutuku t/a Diani Tour & Travel*](#) [2016] eKLR
- ix. The landlord further opined that the Tenant had not established a case for the grant of the orders of interim injunction. The following case laws were cited;-
 - a. [*Francis Muiruri vs Benard Gathuku Ngugi*](#) [2007] eKLR.
 - b. [*Joseph Kibowen Chemor vs William C. Kaseru*](#) [2013] eKLR.
8. From the evidence of the parties and their respective submissions, we are of the view that the issues for determination in this matter are the following;-
 - A: Whether there exists a landlord and tenant relationship between the parties as envisaged under Section 2(1) of the Act.
 - B: Whether the Applicant's Application dated 3.1.2024 is merited.
 - C: Who should bear the costs of this suit.

Issue No. A: Whether there exists a landlord and Tenant relationship between the parties as envisaged under Section 2(1) of the Act

9. The Agreement between the parties herein was defined as a license agreement dated 25.4.2022. The same was to have taken effect on the 1.1.2022 and was to expire on the 31.12.2023. Though the Landlord contends that no Tenant and Landlord relationship was created, I am of a different view. The term of the license agreement was for two (2) years. Section 2(1) of [*the Act*](#) defines such a relationship as a controlled tenancy. the same provides that;-

“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-
 - (ii) contains provisions for termination, otherwise than for breach of covenant, within five (5) years from the commencement thereof.”
10. A license agreement as the one between the parties herein is also not exempted from the operations of [*the Act*](#). Section 2(1) thereof defines a “tenancy” as;-

“Means a tenancy created by a lease or underlease, by an agreement for a lease or under lease by a tenancy agreement or by operation of law, and includes a sub-tenancy but does not include any relationship between a mortgagor and mortgagee as such.”



It is therefore my view that the Agreement entered into by the parties and dated 25.4.2022 and which had to take effect on the 1.1.2022 was perfectly within the jurisdiction of this court.

11. However, this license agreement was to lapse effective the 31.12.2023. The Tenant had a window to apply for its renewal which was subject to the sole discretion of the landlord. This was pursuant to clause 2.6 of the exhibit marked AK-2. The same was conditional on the Tenant making a request in writing at least thirty (30) days prior to the lapse of the lease and also to have been in strict compliance with the covenants in the agreement.
12. From the record, it does not appear that the Tenant ever sought for the extension of the license at least a month before its expiry. There is also no evidence that the Tenant was in strict compliance with the covenants under the license or that it had paid any rents effective the 1.1.2024 to re-establish the relationship of a Tenant and Landlord. It then follows that the relationship was terminated by operation of the parties license agreement dated 25.4.2022.
13. Indeed in their letter dated 25.09.2023, the Tenant's Advocates had made the following request:-

“We have instructions that the lease shall be expiring on 1.1.2024 and it is our client's request that if there will be no renewal of the lease agreement then they should be accommodated up and until the remainder of the license period.”

The said letter is annexure AK-3. It seems that the Landlord acceded to the request as it only moved to regain possession on the 1st and 2nd January, 2024 after the expiry of the Tenancy license period on the 31.12.2023.

14. This court is therefore only called upon to interpret and enforce the aspirations of the parties when they entered into the lease agreement dated 25.4.2022. Without an extension or evidence of any payment of rent after 31.12.2023 then the relationship between the parties have been effectively terminated.
15. The jurisdiction of this court to determine all the other issues herein is compromised and matters concerning the demised premises and as between the parties herein belong to another province.
16. It is therefore our view that though a relationship did exist between the parties as envisaged under Section 2(1) of the Act, the same terminated on the 31.12.2023. We however note that the Tenant is still at the demised premises pursuant to the orders of this court made on the 9.1.2024. It would therefore be prudent to afford the Tenant some reasonable time to evacuate from the demised premises. We would therefore allow it thirty (30) days to leave the demised premises or be evicted at its cost.

Issue No. B: Whether the Applicant's Application dated 3.01.2024 is merited

17. From our analysis of the issues before us, it is clear that the Applicant's Application and Reference both dated 3.1.2024 cannot have any merit when looked against the jurisdiction of this court. We would therefore dismiss both on that basis.

Issue No. C: Who should bear the costs of this suit

18. The Tenant had the Counsel of an Advocate and still decided to come before this court. This is despite earlier recognition that the relationship between the parties would terminate by the 31.12.2023. We would therefore pursuant to Section 27 of the Civil Procedure Act award costs to the Respondent.
19. In the final analysis, the orders that commend to us are as follows:-



- (a) That the Landlord and Tenant relationship herein was effectively terminated on the 31.12.2023.
- (b) That the Applicant's Application and Reference both dated 3.01.2024 are struck out.
- (c) That the Tenant will have thirty (30) days to pay all the rents and mesne profits in arrears and evacuate from the demised premises and in default the Respondent will be at liberty to levy distress and have the Tenant evicted with the assistance of the OCS Rongai police station.
- (d) That the Tenant will pay costs assessed at Kshs. 30,000/=.

Those are the orders of the court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF MAY, 2024.

HON. NDEGWA WAHOME, MBS.....PANEL CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

AND

HON. JOYCE MURIGI.....MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of;

Mr. Okang'o for the Respondent

Mr. Onyancha for the Applicant

