



**Mac Dee Fast Foods Limited v Shah (Tribunal Case E794 of 2024)
[2024] KEBPRT 1634 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1634 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E794 OF 2024
CN MUGAMBI, CHAIR
OCTOBER 31, 2024**

BETWEEN

MAC DEE FAST FOODS LIMITED TENANT

AND

SHANTABEN MANSUKHLAL SHAH LANDLORD

RULING

1. The Landlord's notice of preliminary objection dated 2.08.2024 is brought on the grounds;
 - a. That this Tribunal lacks jurisdiction to entertain both the Reference and the Application as the tenancy was not a controlled tenancy and as such not governed by the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#) Cap 301 of the Laws of Kenya.
 - b. Further that the tenancy determined on 31.7.2024 and as such there is currently no Landlord Tenant relationship between the parties.
 - c. That this Reference has been brought to this Tribunal in clear disregard of the jurisdiction of this court and is an abuse of the due process of court and as such the suit should be struck out with costs to the 1st Defendant (sic).
2. The Landlord having raised the issue of jurisdiction, the court is required to satisfy itself that it has the necessary jurisdiction for the reason that any proceedings in this matter in the absence of jurisdiction would be a nullity and an exercise in futility.
3. The Tenant's Complaint dated 25.7.2024 was brought on the basis that the Landlord had issued the Tenant with an oral notice to vacate the suit premises and further that the Landlord was hell bent on installing another Tenant in the suit premises without regard to the due process and the Applicant's/ Tenant's rights to quiet enjoyment of the premises.



4. The Tenant did not annex any lease agreement to its affidavit in support of its Application dated 25.7.2024.
5. I have however seen the lease agreement annexed to the affidavit of the Landlord sworn on 2.8.2024. The said lease is for a period of six (6) years commencing 1.8.2018. The lease agreement does not contain a provision for termination otherwise than for breach of covenant within five (5) years from the commencement thereof. Consequently, the lease agreement between the parties did not give rise to a controlled tenancy as described at Section 2 of Cap 301 which provides as follows;-

“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.”
4. The Tenant’s Complaint was filed on 25.7.2024. Clearly, the lease being for six (6) years was set to expire on 31.7.2024. This means that as at the time the Tenant approached the Tribunal, the lease for six (6) years was still alive and being one for six (6) years, the Tribunal clearly had no jurisdiction to hear and determine the dispute.
 5. I do not need to say more on this issue and I agree with the Landlord’s contestation that the Tribunal has no jurisdiction in this matter, the consequence of which is that both the Complaint and the Application filed therewith are hereby dismissed with costs to the Landlord. This file is ordered closed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31ST DAY OF OCTOBER, 2024.

HON. CYPRIAN MUGAMBI

CHAIRPERSON

BUSINESS PREMISES RENT TRIBUNAL

Delivered in the presence of Mr. Githinji for the Tenant and Mr. Ondieki for the Landlord.

