



**Permanent Ford Limited v Zhong Wu E-Commerce Kenya Co Ltd (Tribunal
Case E1066 of 2022) [2023] KEBPRT 74 (KLR) (3 March 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 74 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1066 OF 2022
A MUMA, VICE CHAIR
MARCH 3, 2023**

BETWEEN

PERMANENT FORD LIMITED APPLICANT

AND

ZHONG WU E-COMMERCE KENYA CO LTD RESPONDENT

RULING

A. Parties And Their Representatives

1. The Tenant is a limited liability company incorporated in the Republic of Kenya.
2. The Landlord is a limited liability company incorporated in the Republic of Kenya and a lessee of China Wu Yi (Kenya) Precast Kenya Limited who is registered as proprietor as lessee from the Government of Kenya of the demised premises known as Coloho Hotel situated at LR NO 31194.
3. The Firm of Ojienda & Co advocates represents the Tenant.
4. The Firm of Wambugu & Muriuki advocates represents the Landlord.

B. Background Of The Dispute

5. The Tenant and the Landlord entered into an agreement for sub-lease for the demised premises known as Coloho Hotel situated at LR NO 31194 on February 10, 2022 for a term of 5 years; commencing on February 1, 2022 and expiring on January 31, 2027.
6. Vide a Notice of Motion Application dated November 15, 2022, the Tenant sought orders; that the Respondent be restrained from interfering with the Tenant's quiet enjoyment of the demised premises, the Tenant be allowed to liquidate the October- December quarter 2022 rent by monthly instalments of Kshs 500,000 till full payment and reassessment of the current rent based on the value of the rental premises.



7. Accordingly, this Honourable tribunal allowed the Application and granted prayers number 1 and 2 pending the hearing and determination of the same. Further, the tenant was ordered to serve the Respondent for hearing on January 23, 2023.
8. In response thereof, the Landlord filed a Notice of Preliminary objection and a Notice of Motion Application dated November 22, 2022, objecting to the jurisdiction of the Tribunal. The Tribunal ordered that the Application be served for interpartes hearing on January 23, 2023.
9. Subsequently, the Tenant vide a Notice of Motion application dated January 10, 2023 seeking orders against the Landlord for the reconnection of electricity in the demised premises and that the Landlord be cited for contempt.
10. The tribunal allowed the Application and ordered the Landlord to reconnect electricity in the premises pending and the tenant to serve for hearing on January 23, 2023.
11. On January 23, 2023, the tribunal directed that each party had 3 days to file and serve submissions.

C. Claim And Defence

12. The Tenant challenges the legality of a notice for re-entry dated November 12, 2022. It's the Tenant's case that the said notice is a contravention of Section 4 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishment\) Act](#) Cap 301 and Clause 7.13 of the sublease agreement and therefore it should not stand.
13. It also seeks a reassessment of the rent currently payable based on the value of the rental premises.
14. In response thereof, the Landlord objects to the jurisdiction of this Honourable on the grounds that it had forfeited the sub-lease agreement and therefore, there is no existing tenancy agreement.
15. Additionally, it states that the sub-lease agreement contains an arbitration clause and hence proceedings herein ought to be subjected to arbitration and not this Tribunal.

D. Issues For Determination

16. I have carefully considered all pleadings and evidence before me. I find that two key issues fall for determination;
 - a. Whether there exists a tenancy relationship between the Applicant and the Respondents.
 - b. Whether the matter should be referred to arbitration.

I. Whether there exists a tenancy relationship between the Landlord and the Tenant.

17. Pursuant to Section 2 of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act Cap 301, there exists two forms of tenancy agreement: Written and oral or by implication.
18. It is not in dispute that the Landlord and tenant entered into an agreement for sub-lease on February 10, 2022 for a term of 5 years.
19. Unfortunately, this sub-lease agreement was never left to run its full course.
20. The Tenant breached the terms of the sublease agreement by failing to pay the full deposit, rent, and causing disturbance to other tenants within the premises by emission of excessive noise.
21. Consequently, the Landlord exercised his right of forfeiture pursuant to clause 7.1 of the schedule to the sub-lease agreement vide a letter dated November 12, 2022, terminating the agreement and



reserving the right to claim arrears and interests thereon, accruing from the sublease by holding any goods or property.

22. I note that the said notice was properly issued as required under the sub-lease agreement. The rent and unpaid portion of the deposit remained unpaid for sixty (60) days. Additionally, the Tenant was given a seven (7) day notice to rectify the breach vide a letter dated September 22, 2022.
23. The Tenant, however, remained in the premises and continued to pay rent for the demised premises. The Landlord received the said rent marking a continuing tenancy relationship by implication.
24. Therefore, this Tribunal has jurisdiction to exercise any of the powers provided for under Section 12 of the Landlord and Tenant (Shops, Hotels and Catering Establishment) Act Cap 301.

II. Whether the matter should be referred to arbitration

25. Once the Landlord forfeited the sublease agreement, the only recourse to the resolution of the disputes arising from the tenancy relationship is this Honourable Tribunal.
26. The Landlord, therefore, cannot rely on the arbitration clause in an already forfeited agreement as the same stands terminated.
27. The tenant expressed his desire to vacate at the ruling

E. ORDERS

28. For the reasons given above, I order as follows;
 - a. That the Notice of Preliminary Objection dated November 22, 2022 is hereby dismissed.
 - b. Mention of March 20, 2023 to take direction on further extension of interim orders and or enter a consent as to handing over vacant possession back to the landlord.
 - c. The reference shall be fixed for hearing April 3, 2023 and each party is at liberty to file documents, valuations and statement of accounts for assessment of damages within 14 days each Tenant to commence.
 - d. Parties at liberty to apply for any additional reliefs before the hearing date within 60 days of the date herein.
 - e. Costs shall be in the cause.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY BY HON A. MUMA THIS 3RD DAY OF MARCH 2023 IN THE PRESENCE OF OJIENDA FOR THE TENANT AND EREDI FOR THE LANDLORD.

HON A. MUMA

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

