



Ng'ang'a t/a Gatehouse Medical Centre v Gate House Limited (Tribunal Case E114 of 2024) [2024] KEBPRT 1744 (KLR) (13 December 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1744 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E114 OF 2024
A MUMA, MEMBER
DECEMBER 13, 2024**

BETWEEN
DR MUGO NG'ANG'A T/A GATEHOUSE MEDICAL CENTRE TENANT
AND
GATE HOUSE LIMITED LANDLORD

RULING

A. Parties And Their Representatives

1. The Tenant, Dr. Mugo Ng'ang'a, occupies the 1st Floor Suite 1B and runs his clinic as Gate House Medical Centre (the "Tenant").
2. The firm of Kamonjo Kiburi & Company Advocates represent the Tenant in this matter.
3. The Landlord, Gate House Limited, is the proprietor of the premises at Gate House situated at Nakuru Municipality Block 9/8 (the "Landlord").
4. The firm of Wambeyi Makomere & Company Advocates represents the Landlord in this matter.

B. Dispute Background

5. The Tenant moved this Honorable Tribunal vide a Reference and Application evenly dated 12th August 2024. The Tenant sought, inter alia, the following Orders from this Honorable Tribunal:
 - i. An order directing the Landlord to re-open the Tenant's premises.
 - ii. An order directing the Tribunal to investigate the Tenant's complaint or the unlawful locking of the Tenant's premises, the actual rent outstanding and space occupied and make an appropriate determination.



- iii. An order restraining the Respondent, whether acting personally or through their servants, agents, employees, assigns, or representatives, from seizing or distraining the Applicant's goods for rent, or otherwise claiming distress for rent, until the hearing and determination of this Application.
6. Having considered the Tenant's Application, the Tribunal vide an Order dated 13th August 2024 allowed Prayer 2 as per the Tenant's Application dated 12th August 2024 in the interim.
7. Subsequently, the Landlord filed a Notice of Preliminary Objection dated 30th August 2024 and Written Submissions dated 19th September 2024 in response to the Tenant's Application dated 12th August 2024.
8. In response, the Tenant filed a Further Affidavit dated 24th September 2024 and Written Submissions dated 26th September 2024.

C. Tenant's Claim

9. The Tenant avers that he has been operating his clinic, Gate House Medical Centre, for 33 years.
10. He avers that he initially occupied a large space for which he was paying KShs. 130,000.
11. He asserts that due to the Covid-19 pandemic, his health issues, tax problems, and the closure of the War Memorial Hospital, his workload at Gatehouse Clinic was significantly reduced.
12. As a result, he surrendered half of the space at Gatehouse on 1st June 2024, with the consent of both the Landlord and his lawyer.
13. He states that another doctor was to take over the surrendered space, and this arrangement was confirmed by the Landlord.
14. Despite this, he claims that the Landlord continues to charge him KShs. 130,000, instead of adjusting the rent to reflect the reduced space he currently occupies.
15. He states that based on this incorrect amount the Landlord demanded a sum of KShs. 580,989, due up to September 2024, which includes two months in advance.
16. He asserts that he disputed this sum, and on 9th August 2024, the Landlord unlawfully closed his medical clinic.
17. As a result, he is unable to care for sick children, and his personal emergency medical supplies are at risk of expiring.
18. He further claims that the closure of the children's clinic is putting him at risk of breaching contracts with various clients and insurance companies.

D. Landlord's Defence

19. The Landlord contends that the Honourable Tribunal does not have jurisdiction to hear the complaint, as the tenancy was reduced into writing and therefore does not fall within the definition of a controlled tenancy under Section 2(1)(a) of the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), Chapter 301 of the Laws of Kenya (the "Act").
20. It further asserts that the terms of the tenancy is for a period exceeding (5) years, and as such, it does not fall within the definition of a controlled tenancy under Section 2(1)(b)(i) of the Act.



21. It also claims that the tenancy agreement lacks a termination clause within five years from the start of the tenancy, which means it does not fall under the definition of a controlled tenancy as per Section 2(1)(b)(ii) of the Act.
22. Additionally, it points out that the Tenancy Agreement includes a dispute resolution clause, where parties submit to arbitration as their preferred dispute resolution channel.

E. Issues For Determination

23. Having carefully perused all the pleadings and evidence presented before this Honourable Tribunal by the parties, it is my respectful finding that the sole issue for determination is:
 - a. Whether the Tribunal has jurisdiction under section 12 of the Act to investigate the complaint raised by the Tenant?

F. Analysis And Findings

- a. Whether the Tribunal has jurisdiction under section 12 of the Act to investigate the complaint raised by the Tenant?
24. Section 12 (4) of the Act provides that:

“In addition to any other powers specifically conferred on it by or under this Act, a Tribunal may investigate any complaint relating to a controlled tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit.”
25. The above provision allows the Tribunal to, in addition to the powers conferred upon it by the Act, investigate on any other matters that may be raised in relation to a controlled tenancy.
26. The Act at section 2 defines a controlled tenancy as:

“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;”
27. In the instant case, the Landlord claims that the Tribunal lacks jurisdiction on the grounds that the Tenancy was reduced into writing for a period exceeding five (5) years and does not contain a clause for termination within five years from the commencement of the tenancy.
28. The Landlord annexed in its replying affidavit a copy of the Agreement which illustrates that the parties herein entered into a tenancy agreement on 7th June 2024 for a period of five years three months.
29. As illustrated in paragraph 31, a controlled tenancy is defined as a tenancy of a shop, hotel or catering establishment which has been reduced into writing and which is for a period not exceeding five years or, alternatively, contains a provision for termination.
30. In respect to the first limb, this Tribunal acknowledges that the tenancy has been reduced into writing for a term exceeding five years. However, this ground alone does not deprive it of jurisdiction, as the Tribunal is vested with the authority to determine whether the Agreement contains a termination clause.



31. Clause E (vii) of the Agreement provides for the Right to Terminate. It states that:

“The Tenant shall have the right to terminate this Lease upon giving Six (6) months prior notice in that regard to the Landlord provided that all rent paid by the Tenant to the Landlord for the period following such termination shall immediately upon such termination be refunded by the Landlord to the Tenant subject to Clause 4(b)(iv) above.”

32. As reproduced above, Section 2 (1)(b)(ii) of the Act stipulates that if a tenancy agreement has provision for termination, otherwise than for breach of covenant, within 5 years from the commencement of the term, it is a controlled tenancy.

33. In the present case, the termination clause is a blanket provision that gives the Tenant liberty to terminate at any time and for any reason within the 5-year and 3-month term of the tenancy.

34. In effect, it can be invoked by the Tenant, and the Tenant can terminate the tenancy within the first 5 years of the term or even 5 years after commencement of the tenancy.

35. In effect, as worded, the termination clause does not exclude termination of the tenancy within the first 5 years of the term. It is in fact permissive of termination within 5 years from the commencement of the tenancy.

36. To that extent this Tribunal is satisfied that the termination, as worded, brought the tenancy within the meaning of a controlled tenancy under Section 2 (1)(b)(ii) of the Act.

37. Despite the presence of a Termination Clause, Clause E (xvi) of the Agreement provides for Disputes and Arbitration. This clause provides that:

“Save as may be otherwise provided herein all questions in dispute arising between the parties hereto and all claims or matters in such dispute not otherwise mutually settled between the parties shall be referred to arbitration by single arbitrator to be appointed by agreement between the parties or in default of such agreement within Fourteen (14) Days of the notification of such dispute by either party to the other, upon application by either party to the Chairman for the time being of the Kenya Branch of Chartered Institute of Arbitrators of the United Kingdom (“the Institute”).....”

38. Section 3(6)(a) of the Act provides that any agreement relating to, a controlled tenancy, shall be void in so far as it purports to preclude the operation of this Act.

39. In the instant case, Clause E (xvi) of the Agreement expressly excludes the operation of the Act by stipulating that all disputes must be referred to Arbitration. Consequently, the Agreement is rendered as void, thereby deeming the tenancy relationship as one that has not been reduced to writing.

40. In light of the above, this Tribunal finds that this Honourable Tribunal has jurisdiction to investigate the complaint raised by the Tenant herein.

G. Orders

41. In the upshot the Landlord’s Notice of Preliminary Objection dated 30th August 2024 is hereby dismissed. As such, the Tenant’s Reference and Application dated 12th August 2024 is hereby listed for hearing on 30th January 2024.

42. Interim Orders are Extended till final hearing and determination of the reference.



HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

**RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 13TH DAY OF
DECEMBER 2024 IN THE ABSENCE OF THE TENANT AND THE LANDLORD.**

HON A. MUMA

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

