



**Office Hubs Limited v Jaslink Limited & another (Tribunal Case  
E853 of 2024) [2024] KEBPRT 1745 (KLR) (13 December 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1745 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E853 OF 2024  
P MAY, MEMBER  
DECEMBER 13, 2024**

**BETWEEN**

**OFFICE HUBS LIMITED ..... LANDLORD**

**AND**

**JASLINK LIMITED ..... 1<sup>ST</sup> TENANT**

**GEORGE OMWANSA OKENYO T/A TEPTON AGENCIES ..... 2<sup>ND</sup> TENANT**

**RULING**

1. The landlord instituted the present proceedings vide the reference dated 7<sup>th</sup> August, 2024. The landlord sought to recover the rent arrears accrued. Contemporaneously the landlord filed a notice of motion on an even date which forms the subject of the present ruling. The landlord gave a succinct chronology of the transactions that gave rise to the present dispute.
2. It was the landlord's position that even though the initial arrangement between the parties herein was one governed by a sale agreement, the said sale agreement had been rescinded and the tenants' continued occupation created controlled tenancy.
3. The application and reference were opposed by the 2<sup>nd</sup> tenant who filed a notice of preliminary objection dated 19<sup>th</sup> August, 2024. Each of the parties had filed other interlocutory applications but as a matter of practice and the law, the preliminary objection took precedence. The parties filed written submissions in support of their respective positions. The tribunal will proceed to deal with the merits of the preliminary objection.
4. In the case of *Oraro v Mbaja* (2005) eKLR at page 3/8 Justice J B Ojwang had the following to state on what constitutes a preliminary objection:-

“I think the principle is abundantly clear. A “preliminary objection”, correctly understood is now well identified as and declared to be a point of law which must not be blurred with



factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection and yet it bears factual aspects calling for proof or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed”.

5. In the celebrated case of *Mukisa Biscuits Manufacturing Co Ltd v West End Distributors Ltd* (1969) EA 696 at page 701, Sir Charles Newbold P, had the following to state on the same issue:-

“The first matter relates to the increasing practice of raising points which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer, it raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and on occasion, confuse the issues. This improper practice should stop”.

6. Guided by the foregoing two cases, I am required to determine whether the preliminary objection passes the test. For a preliminary objection to succeed the following tests ought to be satisfied: Firstly, it should raise a pure point of law; secondly, it is argued on the assumption that all the facts pleaded by the other side are correct; and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid preliminary objection should, if successful, dispose of the suit.
7. As already been stated, one of the preconditions for a valid preliminary objection is based on the assumption that the facts pleaded are correct and unopposed by the rival party. The parties herein agree largely to the chronology of the transactions that precede the present dispute. The only bone of contention is whether the initial sale agreement mutated into a lease.
8. The jurisdiction of the Business Premises Rent Tribunal is governed by the Landlord and Tenant Shops Hotels and Catering Establishments Act Cap 301. The preamble to the Act states that:

“It is an Act of Parliament to make provisions with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto.”

9. At the outset, this tribunal makes reference to Section 2 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* (Cap 301) which defines a controlled tenancy 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;

10. I find it crucial to highlight Section 12(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* which states:



1. A tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this act, and in addition to and without prejudice to the generality of the foregoing shall have power—
  - a. to determine whether or not any tenancy is a controlled tenancy
11. A tenant is defined as follows; -

“tenant” in relation to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding, and includes a sub-tenant”
12. The Act defines a landlord as follows; -

“landlord”, in relation to a tenancy, means the person for the time being entitled, as between himself and the tenant, to the rents and profits of the premises payable under the terms of the tenancy.”
13. The question of the nature of relationship between the parties herein is with tremendous respect one that is to be interpreted from the lease entered between the parties. The interpretation of the sale agreement and determination of disputes arising from the same does not fall within the purview of the Tribunal. In the circumstances, the preliminary objection succeeds. The Tribunal downs its tools for want of jurisdiction. Matter dismissed for want of Jurisdiction. Costs to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

**HON. PATRICIA MAY**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

Ruling dated, signed and delivered virtually this 13<sup>th</sup> day of December 2024 in the presence of Omar Athman for Khadija for the Landlord , Onchiri for the 1<sup>st</sup> Tenant and No Appearance for the 2<sup>nd</sup> Tenant.

**HON. PATRICIA MAY**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

