



**Crystal Motors (K) Limited v Kenya Railways Corporation & 2 others (Tribunal Case E699 of 2024) [2024] KEBPRT 1680 (KLR) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1680 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E699 OF 2024  
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER  
NOVEMBER 29, 2024**

**BETWEEN**

**CRYSTAL MOTORS (K) LIMITED ..... TENANT**

**AND**

**KENYA RAILWAYS CORPORATION ..... 1<sup>ST</sup> RESPONDENT**

**RALANAKIMS VENTURES LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RAPHAEL KIMEU ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The tenant/applicant moved this Tribunal vide a Reference dated 25<sup>th</sup> June 2024 under Section 12(4) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 complaining that the 1<sup>st</sup> Respondent/landlord had purported to lease the suit premises to 3<sup>rd</sup> parties while it was still in occupation and/or possession thereof. It is further pleaded that there was no termination notice nor communication from the landlord regarding termination of the lease as required under Section 4, Cap 301, Laws of Kenya.
2. The 1<sup>st</sup> Respondent filed a notice of preliminary objection dated 13<sup>th</sup> August 2024 seeking the striking out of the suit on the basis that this Honourable Tribunal lacks the requisite jurisdiction to adjudicate over the dispute by virtue of the provisions of Sections 2(1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 as the issues of the lease agreement in question do not fall within the ambit of the Tribunal since the tenancy period in this suit is nine (9) years.
3. The 1<sup>st</sup> Respondent further contends that Section 2(1)(b)(i) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 specifically states that the Tribunal has jurisdiction to determine controlled tenancy which has been reduced into writing and which is for a period not exceeding five years.



4. According to the 1<sup>st</sup> Respondent, the proceedings before this Honorable Tribunal relate to a lease agreement which has a term of nine (9) years and as such, the Tribunal is not vested with the jurisdiction stipulated under Section 2 (1)(b)(i) and Section 12 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301.
5. It is further pleaded without prejudice that the Applicant's suit offends the mandatory provisions of Section 6 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* Cap 301 which require that a suit shall be instituted by way of a reference/complaint and therefore, there is no suit properly filed before this Honourable Tribunal for determination.
6. Further, the present suit has been commenced through un-procedural means and thus it is fatally defective and incapable of obtaining the orders sought.
7. On 12<sup>th</sup> September 2024, this Tribunal directed that the preliminary objection being on jurisdiction shall be disposed of first by way of written submissions. The 1<sup>st</sup> Respondent's submissions are dated 9<sup>th</sup> September 2024 while those of the tenant are dated 23<sup>rd</sup> September 2024.
8. The 1<sup>st</sup> Respondent submits that the issues in this case revolves around alleged existence of lease between it and the Applicant over property known as Unsurveyed KR land (Part) within Industrial Area siding along Jirore Road, Nairobi. The Applicant and the 1<sup>st</sup> Respondent entered into a lease agreement for a term of Nine (9) years for a space of 0.5 acres of land at Kshs 400,000/= rental fee payable annually pursuant to a letter of offer dated 4<sup>th</sup> October 2017. However, between the year 2018 and the year 2023 without permission, knowledge and approval of the 1<sup>st</sup> Respondent, besides the 0.5 acres which the Applicant had initially been allocated and towards which it pays rent, the Applicant illegally entered and unlawfully occupied an additional space of 1.62 Acres (hereinafter known as "the suit premises").
9. Upon the 1<sup>st</sup> Respondent's inquiry about the encroachment, the Applicant requested to rent the extra space and subsequently the 1<sup>st</sup> Respondent agreed to lease the suit premises to it whereby the Parties maintained the terms and conditions of the aforementioned letter of offer dated 4<sup>th</sup> October, 2017 subject to payment of Kshs. 1,615,000.00 which was payable quarterly as annual rent and security deposit for the reviewed additional space. Due to non-payment of the prerequisite amount within 14 days from the date of offer, the offer lapsed and the additional space of 1.62 acres became free to be dealt with by the 1<sup>st</sup> Respondent. It is on the said basis that the 1<sup>st</sup> Respondent offered the suit premises to the 2<sup>nd</sup> Respondent and subsequently issued it with a Nine (9) years' lease dated 30<sup>th</sup> May.2024 which commenced on 1<sup>st</sup> June, 2024.
10. The above notwithstanding, the Applicant has to date never made any payment for rent for the additional space of the suit premises of 1.62 acres which upon the lapse of the 14 days of the offer subsequently lapsed, the Applicant in its filed application which is not filed alongside a substantive suit as is required by law seeks various orders revolving around temporary injunctive and restraining orders against the Respondents in the matter and costs of the application.
11. According to the 1<sup>st</sup> Respondent, it is not in dispute that the Applicant herein filed the instant application before this Honourable Tribunal to resolve an issue relating to its initial lease that has a term of Nine (9) years. In view of the said position, this matter is not properly before this Tribunal and should not proceed before it for want of jurisdiction.
12. The 1<sup>st</sup> Respondent cites Section 2 of 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 year 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."

13. The 1<sup>st</sup> Respondent cites the case of *Al-Riaz International Limited v Ganjoni Properties Limited* [2015] eKLR in expounding on the requirements of Section 2 of the Act wherein it was stated as follows: -

"In my view, the provisions of section 2 of Cap. 301 are clear. Thus, if a tenancy satisfies any of the conditions provided at Section 2, the tenancy automatically becomes a controlled one and subject to the provisions of Cap. 301 and it does not matter whether the parties had agreed that the provisions of Cap. 301 shall not apply to their relationship. Whether the tenancy relationship between the parties herein was a controlled one, which is subject to the provisions of Cap. 301, is a matter of law and cannot be ousted by agreement between parties because that would amount to contracting outside the law.

14. On the other hand, the Applicant submits that it is not disputed that the subject lease term is Nine (9) Years. However, it includes a provision allowing termination by either party with a three (3) months' notice, which is not related to a breach of covenant and specifically, Paragraph 1 of the lease agreement which states:

"The lease term is nine years commencing 1<sup>st</sup> November 2017, subject to three months' termination notice by either party."

15. We agree with the Applicant's submission that the said provision aligns the lease agreement with Section 2(1)(b)(ii) of the Act, which recognizes such leases as controlled tenancies if they include a termination clause that can be invoked within the first five years.

16. Additionally, Paragraph 15 of the said lease agreement further supports this position as it provides that:

"The lessee shall release the demised land to the lessor unconditionally should it be required for rail purposes without claim of whatsoever nature, within 90 days of request."

17. This clause allows the lessor to terminate the lease if the land is needed for rail purposes. The said termination clause is not linked to a breach of covenant but provides a mechanism for early termination by the lessor and qualifies the lease as a controlled tenancy under the Act due to its inclusion of non-breach related termination provisions.

18. We have seen the court of appeal decision in *Khalif Jele Mohamed & another v Republic & another* [2019] eKLR where the Court held thus:-

"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. In other words, if such a tenancy



has provision for termination, which can be invoked at any time during the term, it is in our view a controlled tenancy."

19. Section 12 of the Act empowers this Tribunal to handle disputes involving controlled tenancies. This jurisdiction is further not limited to leases with a fixed term of five years or less but extends to those with termination clauses applicable within the first five years.
20. The term "within five years from the commencement thereof" in the Act means that a lease with a termination provision applicable during the first five years qualifies as a controlled tenancy. There is nothing in the tenancy agreement in question which can be interpreted to mean that a termination notice could not be issued within the first five years by either party to the agreement.
21. In allowing the appeal, the Court of Appeal in the case of Khalif Jele Mohamed (*supra*) further noted that; -

"The Judge appears to have "read into" the termination clause a provision that either party could only terminate the tenancy after expiration of the first five years after commencement, and not earlier, when the provision does not say so. We accept that had a provision to that effect been included in the termination clause, then, the tenancies would have been outside the purview of a controlled tenancy. That would be in line with the Mombasa High Court decision in *Melas vs. New Carlton Hotel Limited* [1976-80]1KLR 458, where Sheridan, J. held that a right to serve notice to determine the term of a tenancy on the expiration of five years does not bring the tenancy within the terms of Section 2 (1)(b)(ii) of the Act.

In the result, we are in agreement with counsel for the appellant that there is nothing in the tenancy agreements which can be interpreted to mean that a termination notice could not be issued within the first five years by either party to the agreement. It does not matter, in our view that no such notice was in fact given by either party."

22. We are therefore in agreement with the tenant/applicant that the lease agreement herein created a controlled tenancy and the preliminary objection in that regard has no merit and is a candidate for dismissal.
23. In regard to the competence of the suit, we have perused the court record and have seen a reference dated 26<sup>th</sup> June 2024 which is in the prescribed Form C pursuant to Regulation 5 of the Landlord and Tenant (Shops, Hotels and Catering Establishments), (Tribunal)(Forms and Procedure), Regulations, 1966 which provides as follows; -

"5. Reference to the Tribunal under section 6(1) or section 12(4) of the Act shall be in Forms B and C in the Schedule to these Regulations."

24. We are satisfied that the tenant has properly instituted the instant reference and the subsequent proceedings before this Tribunal. The preliminary objection on this limb is also declined.
25. In the premises, the 1<sup>st</sup> Respondent notice of preliminary objection dated 13<sup>th</sup> August 2024 is hereby dismissed with costs to the tenant/applicant. The matter shall proceed to hearing and determination on the merits.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29<sup>TH</sup> DAY OF NOVEMBER 2024**



**HON. GAKUHI CHEGE**  
**(PANEL CHAIRPERSON)**  
**BUSINESS PREMISES RENT TRIBUNAL**  
**HON. JOYCE AKINYI OSODO**  
**(MEMBER)**

In the presence of:

Miss Tusime for the 1<sup>st</sup> Respondent

No appearance for the Tenant/Applicant.

