



Cafe' Helena Limited v Laptrust & 2 others (Tribunal Case E540 of 2024) [2024] KEBPRT 1874 (KLR) (5 August 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1874 (KLR)

REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E540 OF 2024
P KITUR, MEMBER
AUGUST 5, 2024

BETWEEN

CAFE' HELENA LIMITED TENANT

AND

LAPTRUST LANDLORD

AND

LASER PROPERTIES LIMITED 1ST RESPONDENT

VALLEY AUCTIONEERS 2ND RESPONDENT

RULING

A. Parties And Background

1. The Landlord is the owner of the building known as Metro Park House erected on Title Number L.R 209/ 2650.
2. The Tenant herein carries on business on the Ground Floor of the said building as a Tenant to the Landlord.
3. The Landlord is represented by the firm of Koskei Monda Advocates LLP.
4. The Tenant is represented by T.M Kuria & Company Advocates.

B. The Dispute Background

5. The Landlord and the Tenant entered into a Lease Agreement vide a Letter of Offer dated 20th July 2020 for an area measuring 530 square feet on the Ground Floor of the suit property for a term of six years commencing 1st August 2020.



6. The tenancy continued uninterrupted until sometime in April 2024 when the Landlord, through the Auctioneer herein commenced the process of distress for rent.
7. The Tenant thereafter proceeded to file a complaint against the Landlord under s. 12(4) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, cap 301.
8. The Tenant additionally filed an Application dated 7th May 2024 seeking interim relief.
9. In response, the Landlord filed a Replying Affidavit together with a Notice of Preliminary objection dated 22nd May 2024 raising the following points of law;
 - i. That this Honourable Court lacks jurisdiction to handle this dispute since there is an agreement between the parties for a term of six years.
10. Parties took directions and agreed to dispose of the Notice of Preliminary Objection by way of Written Submissions which were duly filed by both parties.

C. List Of Issues For Determination

11. Having given full consideration to the Preliminary Objection raised, the issue for determination is;
 - i. Whether this Tribunal has Jurisdiction to hear and determine the matter by dint of section 2 of the Landlord and Tenant (Hotels, Shops and Catering Establishments) Act.

D. AnAnalysis And Findings

12. Jurisdiction is everything and once challenged, a determination should be made before the Tribunal can proceed with further disposal of any matter thereto. The Tribunal has no option but to first make a determination whether it is clothed with jurisdiction in the matter. In the case of Owners of the Motor Vessel 'Lillian'" (s) versus Caltex Oil (Kenya) Ltd [1989] KLR1, the Court stated as follows:

Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

13. The question therefore arising is whether there exists a tenancy relationship between the Tenant and the Landlord subject to the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act.
14. Under Section 2 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, a 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 date thereof Or
 - iii. Relates to premises of class specified under subsection (2) of this section.
15. The Letter of Offer which governs the terms of engagement between the Landlord and the Tenant herein was availed before this Tribunal and shows that the Tenancy is to run for a period of Six years



from 1st August 2020. The same also does not contain a termination clause otherwise than for breach of covenant at any time during the pendency of the Lease.

16. In Republic v Chairperson - Business Premises Rent Tribunal at Nairobi & another Ex-Parte Suraj Housing & Properties Limited & 2 others [2016] eKLR, the Judge cited with approval the case of *Pritam vs. Ratilal and another* Nairobi HCCC No. 1499 of 1970 [1972] EA 560 where it was stated as follows:

“Therefore the existence of the relationship of landlord and tenant is a pre-requisite to the application of the Act and where such relationship does not exist or it has come to or been brought to an end, the provisions of the Act will not apply. The applicability of the Act is a condition precedent to the exercise of jurisdiction by a Tribunal; otherwise the Tribunal will have no jurisdiction. There must be a controlled tenancy as defined in section 2 to which the provisions of the Act can be made to apply. Outside it, the Tribunal has no jurisdiction.”

17. From the foregoing, the Tenancy herein cannot be termed as a controlled tenancy, which therefore ousts this tribunal's jurisdiction to hear and determine the dispute.

18. I therefore proceed to order as follows;

E. Orders

- a. The Landlord's Preliminary Objection dated 22nd May 2024 is hereby upheld.
- b. The Tenant's Complaint dated 8th May 2024 and Application dated 9th May 2024 are hereby struck out.
- c. Costs are awarded to the Landlord assessed at Kshs. 30,000/=.
- d. File is marked as closed.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY BY HON P. KITUR THIS 5TH DAY OF AUGUST 2024 IN THE ABSENCE OF THE PARTIES.

HON P. KITUR

BUSINESS PREMISES RENT TRIBUNAL

