



REPUBLIC OF KENYA

BUSINESS PREMISES RENT TRIBUNAL

VIEW PARK TOWERS 7TH & 8TH FLOOR

TRIBUNAL CASE NO. 123 OF 2021 (NAIROBI)

FRANSA CAPITAL LIMITED.....TENANT/APPLICANT

VERSUS

LAXMI PLAZA LIMITED..... RESPONDENT/LANDLORD

RULING

1. Before me are motions dated 5/2/2021, 23/2/2021 and notice of preliminary objection dated 25th February, 2021. In the preliminary objection dated 25/2/2021, the Landlord/Respondent contends that this tribunal does not have jurisdiction to entertain this case as there is a lease dated 1/7/2016 between the parties for a term of 5 years and 3 months with no provision for termination otherwise than for breach of covenant.
2. The said lease is annexed to the replying affidavit of ANILKUMAR LAXIMICHAND SHAH who is a director of the Landlord sworn on 25th February, 2021 and marked ALS1. The same is dated 1/7/2016 and is for a term of 5 years 3 months. The said lease does not provide for termination otherwise than for breach of covenant.
3. At the time of entering into the lease agreement the Tenant was operating under the name PREMIA CREDIT LIMITED but later changed its name to FRANSA CAPITAL LIMITED as per annexure ALS2 attached to the replying affidavit.
4. According to a replying affidavit sworn on 2nd March, 2021 by one SAMUEL NDUNGU KIOI on behalf of the Tenant in response to the application dated 23rd February, 2021 he states that the Tribunal would not have in view of the contention by the latter.
5. The Tenant contends that there is no formal lease between it and the Landlord but there was intention to draw up a lease by the landlord and that it received a draft lease which was never exerted.
6. The Tenant disputes the signature in the lease and the company's seal affixed thereon. It is however admitted that PREMIA CREDIT LIMITED changed its name to FRANSA CAPITAL LIMITED on 1st July, 2016 which is the same date when the lease is dated.
7. The Tenant contends that even if this Tribunal was to find and hold that the lease annexed to the Landlord's application and replying affidavit was valid, the tenancy would still be controlled because its not stamped and registered making it a periodic tenancy.
8. The Tenant further cites clause 6.1.4 to contend that the lease grants the Landlord the right of re-entry if events listed therein occur.
9. The Landlord filed a further affidavit on 22nd March, 2021 by the same deponent. Of interest is the attached affidavit of PRITASH HASMUKH SHAH Advocate who attested the lease document and who confirms having witnessed the same being executed.
10. The tenant did not file submissions as directed on 3/3/2021 and 3/5/2021.
11. In the celebrated case of OWNERS OF THE MOTOR VESSEL "LILIANS" – VS- CALTEX OIL (KENYA) LTD (1998) e KLR it was held at page 8-9/27 as follows:

“ I think that is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything, without it a court has no power to make one more step where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of Law down tools in respect of the matter before it the moment it holds that it is without jurisdiction”.

12. The jurisdiction of this Tribunal is conferred by the LANDLORD & TENANT (SHOPS, HOTELS & CATERING ESTABLISHMENTS) ACT CAP. 301 Laws of Kenya in respect of controlled tenancies.

13. Controlled tenancy is defined in section 2 to mean tenancy of a shop, hotel or catering establishment which has not been reduced into omitting or which is for a period not exceeding five years or contains a provision for termination otherwise than for breach of covenant within 5 years from the Government thereof or relates to premises of a class specified under subsection (2) of the said section.

14. I have perused the lease agreement exhibited by the Landlord and hold as follows:-

(i) The same is for a period of 5 years 3 months.

(ii) The lease has executed between the landlord and PREMIA CREDIT LTD by which name the Tenant was known before it changed to the current name.

(iii) The attesting advocate of the lease has deponed on oath that he was present when it was executed and I have no reason to doubt him as an officer of the court.

(iv) Although the lease is not registered, there is no requirement for such registration under Cap. 301, to remove it from the exclusion set out in section 2 thereof.

(v) The Tenant failed to disclose the existence of the said lease when it sought for exparte and is as such guilty of material non disclosure and as such liable to discharge of the orders made in its favour (see GABRIEL KARIUKI GITONGA & 2 OTHERS (2021) e KLR on the issue).

(vi) This Tribunal have no jurisdiction to hear and determine the complaint lodged by the Tenant.

(vii) The Provisions in Clause 6/1/2014 of the lease are not relevant or material to this case as they do not bring it within the jurisdiction of the Tribunal.

15. Consequently, I allow the preliminary objection and dismiss the complaint as well as the application dated 4th February, 2021.

16. I also allow the Landlord's application dated 23rd February, 2021 and vacate the orders made herein on 5th February, 2021.

17. The Landlord shall have costs of the proceedings assessed at Kshs.30,000/- against the Tenant.

It is so ordered.

HON. GAKUHI CHEGE

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

DATED, SIGNED & DELIVERED this **4TH** day of **JUNE** 2021.

HON. GAKUHI CHEGE

VICE CHAIR

BUSINESS PREMISES RENT TRIBUNAL

In the presence of:

Mr. Muinde for the Tenant/Applicant

Mr. Wanjohi for Respondent/Landlord