



**Wanjira v Grache Leasing Ltd (Tribunal Case E1200 of 2023)  
[2023] KERRT 1180 (KLR) (5 December 2023) (Ruling)**

Neutral citation: [2023] KERRT 1180 (KLR)

**REPUBLIC OF KENYA  
IN THE RENT RESTRICTION TRIBUNAL  
TRIBUNAL CASE E1200 OF 2023  
HK KORIR, CHAIR  
DECEMBER 5, 2023**

**BETWEEN**

**MARTIN OKONJI WANJIRA ..... PLAINTIFF**

**AND**

**GRACHE LEASING LTD ..... DEFENDANT**

**RULING**

1. By a notice of Preliminary Objection dated 25<sup>th</sup> October 2023, the defendant opposed the proceeding herein on ground inter alia that the tribunal has no jurisdiction to determine the suit by virtue of Special Condition (c) on the Tenancy Agreement which provides that any dispute that arises between the parties should be referred to arbitration and that the suit violates Section 2 of Cap 296.
2. On 26<sup>th</sup> October 2023 directions were given for the P.O to be canvassed by way of written submissions. At the time of writing this Ruling only the Defendant had filed submissions. I shall proceed to consider the same.
3. Counsel for the Defendant filed written submissions dated 6<sup>th</sup> November 2023 where he reiterated that the tribunal lacks jurisdiction to handle the matter. Counsel stated that the dispute arose after the defendant issued the Plaintiff with a one month notice to vacate dated 26/07/2023 as required under Clause 5 of the Tenancy Agreement. Counsel stated that Clause 8 (c) of the tenancy agreement provides that disputes should be referred to arbitration therefore the tribunal is not the right forum to address the dispute.



4. Counsel relied on the case of *Monique Oraro v AAR Insurance Co. Ltd* [2019] eKLR where the court held that:

In Nyutu Agrovet Limited Vs. Airtel Networks Limited [2015] eKLR the Court of Appeal held:

"Arbitration as a dispute resolution mechanism is not imposed on parties. They choose it freely when they incorporate the arbitration agreement into their contract, and at times even include the finality clause as was the case here."

The Court finds that parties agreed to the choice of forum on their own volition and integrated it in the Sales Agency Agreement. In fact it was /is mandatory by use of 'shall'. The Defendant submitted that the Arbitration clause does not oust the jurisdiction of the Court to hear and determine the matter. The Defendant further submitted that arbitration cannot be compelled in the circumstances and is only available on mutuality of parties.

With respect to Counsel for the defendant; the mutuality of agreement of parties on arbitration as the choice of forum is evidenced by contracting parties of the Sales Agency Agreement which was between both Plaintiff and Defendant duly executed hence there is privity of contract and both parties are bound by the terms of the contract more so Clause 25 as is in issue in these proceedings."

5. Counsel stated that the Plaintiff having chosen the forum of arbitration is bound by the terms of the agreement. To buttress his position, counsel relied on the case of *Kabew Kenya Limited v Inabensa-Kenya* [2016] eKLR where the court held that:

For all the reasons aforesaid, my considered view and finding is that, the parties in Clause 11 of their Agreement made a separate Arbitral Agreement and committed thereby to refer all the disputes arising between them in respect of that Agreement to arbitration./It has been demonstrated that the application for referral to arbitration has been made in accordance with the strictures set out in Section 6 of the *Arbitration Act*, in that the application was made at the same time that the Defendant acknowledged the suit. Thus I would allow the application dated 7th December, 2015 and grant stay of the proceedings herein pending referral of the matter to arbitration. However, granted the nature of the reliefs sought in the Plaintiff's application dated 1st December, 2015 the grant of which would accord well with the powers of the Court under Section 7 of the *Arbitration Act*, I take the view that the Plaintiff is at liberty to pursue the prosecution of that application for such interim measures of protection as are still relevant and pursuable."

6. Counsel relied on the case of *Jimmy Mutuku Mwithi t/a Oasis Farm v Eric Okondo Omanga t/a Cidai Farm* [2016] eKLR where the court held that:

The arbitration agreement is defined under Section 2 as:

An agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a signed relationship, whether contractual or not."

The affidavit on support sworn by the parties shows that disputes have arisen in the course of performance of the contract.



There is no consensus between the parties and there is no doubt that plaintiff has invoked the court's jurisdiction already. I venture to conclude that not enough attention has been directed to the function and provisions of the arbitration clause. The clause embodies the parties to an agreement in the event a dispute arises and obligations to be undertaken to resolve the same.

Though the plaintiff filed plaint against the defendant, the record shows that defendant has seized the first opportunity to apply for stay of proceedings before filing defence or any proceedings.

In my view the right to refer the matter by this court as required by law to arbitration has not been extinguished. The proposition was considered in the Court of Appeal decision dealt with proposition of Section 6 in *Kisumuwalla Oil Industries Ltd Vs. Pan Asiafic Commodities Pye Ltd & Another* CA No. 100 of 1995.

The court held interalia:

In view of the reasons I have endeavored to state above, and in light of the clear provisions of Section 6 of the *Arbitration Act*, unless the defendant waives his right to rely in such a clause he would be obliged to apply for a stay of proceedings.”

The appellant has not waived his right under the arbitration clause by taking any steps to file defence or pleadings to the claim by the plaintiff. The plaintiff vide plaint and statement filed on 26/1/2016 invoked the magistrate's court jurisdiction to hear and determine the dispute.

The defendant/appellant by application before this court has challenged the procedures taken by the plaintiff. In reading and perusal of the agreement annexed to the plaint a contract between the parties do exist. The terms to regulate their relationship are in the agreement.

The forum for settlement of disputes arising from the contract is provided for in Clause 13. The facts as deposed in the affidavits and statement of claim by the plaintiff has limited court's intervention due to the existence of arbitration clause.”

7. Counsel relied on Section 2 of Cap 296 which provides that:

This Act shall apply to all dwelling-houses, other than—

- (a) excepted dwelling-houses;
- (b) dwelling-house let on service tenancies;
- (c) dwelling-houses which have a standard rent exceeding two thousand five hundred shillings per month, furnished or unfurnished.”

8. Counsel stated that the suit premises was a dwelling house with rent payable being Kshs. 35,000/= thus the tribunal lacks jurisdiction to determine the matter as per Section 2 of Cap 296. Counsel relied



on the case of *Republic v Chairman Rent Restriction Tribunal; Samuel Joel Kibe & another (Interested Parties) Ex parte Charles Macharia Mugo* (2019) eKLR where the court held that:

Having come to the conclusion that the tribunal had no jurisdiction to entertain the claim that was brought before it by the interested parties, it is my further finding that the proceedings before the tribunal and its orders issued on 21st August, 2017 were all nullities.”

9. Counsel relied on the case of *Owners of the Motor Vessel “Lillian S” Caltex Oil (Kenya) Ltd.* (1989) KLR 1 where Nyarangi, JA stated that:

By Jurisdiction is meant the authority which a court has to decide matters that are before it or take cognisance of matters presented in a formal way for its decision...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 downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...Thus, issue of Jurisdiction of the court must be determined first and foremost.”

10. Counsel prayed that the Tribunal finds merit in the P.O and proceed to dismiss the suit.
11. I have considered the grounds set out in the Notice of Preliminary Objection, the defendant’s submissions, the relevant legal frameworks, and the prevailing jurisprudence on the key questions falling for determination by this tribunal. I find that only one key question falls for determination by this tribunal is whether the tribunal has jurisdiction to hear and determine this suit.
12. I will determine this issue in two limbs being:
- a. Whether the proceedings herein should be stayed and the matter be referred to arbitration; and
  - b. Whether the Tribunal has jurisdiction to handle this suit pursuant to Section 2 (c) of Cap 296.

**a. Whether the proceedings herein should be stayed and the matter be referred to arbitration.**

13. In determining this issue, Section 6(1) of the *Arbitration Act* No. 4 of 1995 is key. It provides:-
- (1) A court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than the time when that party enters appearance or files any pleadings or takes any other step in the proceedings, stay the proceedings and refer the parties to arbitration unless it finds—
    - (a) that the arbitration agreement is null and void, inoperative or incapable of being performed; or
    - (b) that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration.”
14. The provision is mandatory but has a limitation. It is expressly provided that if the arbitration agreement is “null and void, in operative or incapable of being performed,” and where there is no dispute between the parties with regard to matters agreed to be referred to arbitration. Where a party alleges these matters and they are proved, the court will not stay the proceedings and refer the matter to arbitration.



15. The arbitration clause in the agreement reads as follows:-
- Any dispute in respect of or arising out of the provisions of this Tenancy Agreement to be referred to arbitration in accordance with the *Arbitration Act* 1995 or any statutory modification or re-enactment thereof for the time being in force.”
16. The clear intentions of the parties was that if any dispute arises they oust the jurisdiction of the court and have preference to have the dispute settled through arbitration. This in line with Judicial Authority, under Article 159(2)(c) of *the Constitution* which states.
17. In exercising Judicial authority courts and Tribunals shall be guided by the following principles –
- “Alternative forms of dispute resolution including reconciliation, mediation, arbitration ----- shall be promoted.”
18. The tenor and import of Article 159(2) (c) of *the Constitution* as read together with Section 6(1) of the *Arbitration Act* is that where parties to a contract consensually agree on arbitration as their dispute resolution forum of choice, the courts are obliged to give effect to that agreement. The Tribunal will therefore promote other forms of dispute resolution where the circumstances of the case so allows and the parties have agreed to an alternative mode of dispute resolution other than the court.
19. Secondly, where a party elects to come to court and the other party to the arbitration agreement seeks to invoke the arbitration agreement, the party seeking to invoke the agreement is obligated to do so not later than the time of entering appearance.
20. The defendant after filing his Notice of Appointment duly filed the application seeking to stay the proceeding pending Arbitration. Since the defendant filed the application within the time frame set out in Section 6(1) of the Act, the tribunal should proceed to consider it.
21. Section 10 of the *Arbitration Act* provides that:
- No court shall intervene in a matter governed by the Act except as provided under the Act.”
22. In the case of *Wringles Company (East Africa) –v- Attorney General & 3 others* (2013) eKLR the court held:-
- That courts cannot re-write what has already been agreed upon by the parties as set out in the agreement. The parties had agreed that in the case of a dispute arising as to the validity of the agreement, then the same would be subject to arbitration and the court cannot re-write the same.”
23. The parties freely and duly executed the agreement with full knowledge of the terms therein therefore there is privity of contract and both parties are bound by the terms of the contract. I find that the forum for settlement of disputes arising from the Agreement is provided under Clause 8(c) of the said Agreement.

**b. Whether the Tribunal has jurisdiction to handle this suit pursuant to Section 2 (c) of Cap 296.**

24. Section 2(1) of Cap 296 states as follows:-
2. Application
- (1) This Act shall apply to all dwelling-houses, other than—



- (a) excepted dwelling-houses;
- (b) dwelling-house let on service tenancies;
- (c) dwelling-houses which have a standard rent exceeding two thousand five hundred shillings per month, furnished or unfurnished.

25. It is not in dispute that the tenant had been occupying the suit premises while remitting a monthly rent of Kshs. 35,000/= therefore, the tribunal has no jurisdiction.

26. In the case of *Johakim Abayo vs Mokua Damacline Nyamoita* (2021) Eklr the court at paragraphs 21 and 22 stated that;

The tribunal has no jurisdiction to entertain or issue orders in a dispute where the agreed or prevailing rent is more than Kshs. 2,500 per month.”

27. In the case of *Republic –vs- Deputy Chairman Rent Restriction Tribunal; Butrus Juma (Interested Party) Ex Parte Joseph Kagwatha* [2019] Eklr, the standard rent of the suit property was Kshs. 25,000/= . In upholding the application and dismissing the suit, the court ruled that:

It is not in dispute that the interested party was paying a monthly rent of Kshs. 25,000 per month. This is clear from the tenancy agreement marked as annexure JK2 to the ex-parte Applicant’s supporting affidavit. Section 2 (1) of the *Rent Restriction Act* Cap 296 Laws of Kenya is clear that the act shall apply to dwelling houses which have a standard rent of Kshs. 2,500 per month, furnished or unfurnished. It is also clear that the standard rent could not be assessed by the tribunal in the instant case since the rent has been agreed upon by the landlord and tenant. It is therefore not in doubt that the tribunal lacked jurisdiction to entertain the interested party’s application.”

28. From my analysis of the facts of this case and the law, I find no bar, either legal or otherwise to stop the Tribunal from upholding the P.O. None of the grounds specified in paragraphs (a) & (b) of section 6 of the *Arbitration Act* has been demonstrated. Accordingly, I allow the P.O and order that these proceedings be and are hereby stayed pending referring the dispute to arbitration and hearing and determination of the arbitration proceedings.

29. The tribunal also finds that it has no jurisdiction to determine the matter by dint of Cap 296.

30. I make no orders as to costs.

31. It, therefore, follows that the interim orders earlier granted have to be and are hereby discharged for want of jurisdiction and to afford the parties an opportunity to settle the matter through arbitration.

**RULING DELIVERED IN OPEN COURT THIS 5<sup>TH</sup> DAY OF DECEMBER 2023.**

Certified copies to issue to parties accordingly.

**SIGNED**

**HILLARY K. KORIR**

**CHAIRMAN**

**RENT RESTRICTION TRIBUNAL**

**NAIROBI**

