

KENYA / JUDGMENT

Gitonga v Njoroge [2025] KEBPRT 315 (KLR)

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COURT

Business Premises Rent Tribunal

BEFORE

N Wahome, Joyce Murigi

CASE / FILE NUMBER

Tribunal Case E146 of 2025

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Gitonga v Njoroge (Tribunal Case E146 of 2025) [2025] KEBPRT 315 (KLR) (4 July 2025) (Ruling)

Neutral citation:

[2025] KEBPRT 315 (KLR)

Republic of Kenya

In the Business Premises Rent Tribunal

Tribunal Case E146 of 2025

N Wahome, Chair & Joyce Murigi, Member

July 4, 2025

Between

Joseph Gitonga

Applicant

and

Teresia Wanjiku Njoroge

Respondent

Ruling

1. This Ruling is on the Landlord/Applicant's preliminary objection dated 28/5/2025. The same is on the grounds that:-i.This Honourable court lacks jurisdiction to hear and determine the application as filed as the Applicant is not a protected Tenant.ii.The lease agreement between the Applicant and the Respondent is for a term exceeding five years.
2. The Landlord has not filed any pleading in either opposition to the Tenant's application dated 14/5/2025 or in support of the notice of preliminary objection. The landlord also never filed any submissions as guided by the court on the 28/5/2025.
3. On his part, the Tenant filed the submissions dated 1/7/2025 in which he raised a single point of law for our determination. The same is to the effect the tenancy agreement was not in writing and therefore fall squarely under the jurisdiction of this court as provided for under Section 2(1) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Cap. 301 hereinafter "the Act.
4. Section 2 (1) of the Act provides that:-"Controlled Tenancy means a tenancy of a shop, hotel or catering establishment-a.Which has not been reduced into writing, orb.Which has been reduced into writing and which-i.Is for a period not exceeding five years, orii.Contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof".
5. The Landlord has claimed that the tenancy herein is for a period exceeding five years and therefore outside the jurisdiction of this court. He has however not annexed a copy of the agreement nor given a date of the same.
6. We are therefore persuaded by the averment by the Tenant that their tenancy agreement was not in writing and was therefore a controlled Tenancy as envisaged by Section 2(1) (a) of the Act.
7. Indeed the Landlord/Applicant has not provided any materials to this court on which the notice of preliminary objection dated 28/5/2025 is founded on. The law on preliminary objections is now settled and all courts are agreed on the jurisprudence as enunciated in the case of Mukisa Biscuits Manufacturing Company Ltd – vs- Westend Distributors Ltd (1969) IEA 696 Sir Charles Newbold V.P held that:-"So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point of law may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration".

8. The preliminary objection herein has not in our view met the threshold of a preliminary objection as expounded in our wide jurisprudence on the subject matter. indeed we do determine that the same fits the bill of being an abuse of this court's processes. We would therefore dismiss the same with costs.
9. In the final analysis, the orders that commend to us are the following:-i.That the Notice of Preliminary objection dated 28/5/2025 is dismissed.ii.That the Landlord/Applicant shall pay the costs assessed at Kshs.15,000/- to be offset from the rent payable.iii.That the interim orders on record shall remain in force pending the hearing and determination of the application dated 14/5/2025. Those are the orders of the court.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4THDAY OF JULY 2025.
HON. NDEGWA WAHOME, MBS, - PANEL CHAIRPERSONHON. JOYCE MURIGI,-
MEMBERBUSINESS PREMISES RENT TRIBUNAL. BPRT.Ruling delivered in the presence of
Counsel for the Tenant/Respondent and Counsel for the Landlord.

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Prepared on 24 October 2026 · Esheria