



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC CASE NO. E032 OF 2021**

**ERNEST WANJOHI MAINA (as the legal representative of**

**ELIUD WANJOHI MAINA – DECEASED).....PLAINTIFF**

**VERSUS**

**ALBERT GACHORE MWANGI.....DEFENDANT**

**RULING**

1. By a preliminary objection dated 6.10.2021 the respondent states the court lacks jurisdiction to entertain the suit given the plaintiff did not comply with and exhaust the internal dispute remedies protected under the **Landlord & Tenants (Shops, Hotels and Catering Establishment) Act Cap 301**.
2. The preliminary objection was supported by written submissions dated 17.1.2022. The facts as pleaded in the plaint are that parties signed a lease on 15.5.2014 over land **Registration No. Ntima/Igoki/2406** with effect from 1.8.2014 till August 2019, for monthly rent of **Kshs.66,000/=** for the first year and an increment to **Kshs.70,000/=** for the subsequent years.
3. It was averred the lease expired but there was an agreement for an extra year after expiry and the rent to continue being paid in the event there was no renewal and that a valuation be made for the development and payment of the equivalent value to the tenant.
4. It was averred that defendant refused to vacate after the one year or pay rent hence he was on the property illegally. The plaintiff therefore prayed for an eviction order, permanent injunction and for the accrued rent for the entire period of the alleged illegal occupation.
5. The defendant entered appearance but as at the filing of the written submissions there was no defence on record save for the preliminary objection.
6. A preliminary objection has been defined as a pure point of law, raised on the assumption that what I s pleaded by the other side is assumed to be true. See ***Mukhisa Biscuit Manufacturers Ltd. vs. West End Distributors Ltd. [1969] E.A. 696***. Courts have also held that a preliminary objection would not amount to one if the court had to look at the facts and or it was based in the exercise of a court's discretion. See ***IEBC- vs- Jane Cheperenger and 2 others (2015) eKLR***.
7. The defendant submitted that the tenancy after expiry was now governed by **Section 2 (1) of the Landlord & Tenants (Shops, Hotels and Catering Establishment)**, hence any disputes thereof ought to go before the Business Premises Rent Tribunal under **Section 60 of the Land Act** given it was both a periodic and a controlled tenancy as rent was still being received. Reliance was placed on ***Kaka Mohamed -vs- Mohamed Ali (2018) eKLR***.
8. In opposing the preliminary objection, the plaintiff has submitted that Clause VIII of the tenancy agreement automatically extended the tenancy to August 2024.
9. In the alternative it was submitted that even if the tenancy had expired there would be no landlord and tenancy relationship to be handled by the Business Premises Rent Tribunal, as held in ***Board City Ltd -vs- Trusted Estate Housing Ltd NRB ELRC no. 203 of 2018 and R.K Investments -vs- Evanson Gitau (1998) eKLR***.
10. When the parties appeared before court on 16.11.2021 it was indicated that there were outstanding rent arrears of Kshs.1.2 million. Parties recorded they a consent the rent arrears to be cleared on monthly basis.
11. The facts as pleaded by the plaintiff are disputed by the defendant particularly the issue of the automatic renewal of the lease and the

compensation for the defendant's developments in terms of clause 10 (vi) of the tenant's agreement.

12. In my considered view, the preliminary objection filed by the defendant requires the court to delve into the facts and the evidence. It does not therefore satisfy the threshold of what amounts to a preliminary objection

13. The same is therefore dismissed with costs. The defendant to be granted more days to put in a defence. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 30<sup>TH</sup> DAY OF MARCH, 2022**

**IN PRESENCE OF:**

**MISS WAIRIMU FOR PLAINTIFF**

**MUTUMA FOR DEFENDANT**

**HON. C.K. NZILI**

**ELC JUDGE**