



REPUBLIC OF KENYA



**KENYA LAW**  
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**Padia v Kanyi (Environment & Land Case E07 of 2022)  
[2024] KEELC 5054 (KLR) (3 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5054 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE E07 OF 2022**

**JO OLOLA, J**

**JULY 3, 2024**

**BETWEEN**

**RAJENDRA NANOO PADIA ..... PLAINTIFF**

**AND**

**PHILLIS WANJIKU KANYI ..... DEFENDANT**

**RULING**

1. By a Complaint dated 11<sup>th</sup> May 2022 as amended on 21<sup>st</sup> July 2022, Rajendra Nanoo Padia (the Plaintiff) prays for Judgment against the Defendant for:
  - a). An order of vacant possession of the premises demised to the Defendant comprising of Title Number Nyeri Municipality Block 2/57 and in default the Defendant be forcefully evicted from the premises by Hippo Auctioneers General Merchants;
  - b). Mesne profits 1st May 2022 at a rate of Kshs. 84,125/=;
  - c). Interest on (b) above at commercial rates;
  - d). Costs of the suit; and
  - e). Any other relief the Honorable Court may deem fit to grant.
2. Those prayers arise from the Plaintiff's contention that he is the sole proprietor of the building erected on the suit property and that he had leased the ground floor of the same to the Defendant effective 1<sup>st</sup> February 2017. It is the Plaintiff's case that the lease for 5 years and 3 months expired on 30<sup>th</sup> April 2022 but despite notice of non-extension of the same, the Defendant has failed to yield vacant possession of the premises.
3. But in her statement of Defence dated 15<sup>th</sup> June 2022 as amended on 25<sup>th</sup> July 2023, Phyllis Wanjiku Kanyi (the Defendant) avers that upon notice to vacate the premises being served upon her, she



- approached the Plaintiff who assured her to disregard the same and continue paying rent as usual. The Defendant further avers that the said notice to vacate had been given to her by the Plaintiff's Advocate and that it did not emanate from the Business Premises Rent Tribunal as required by law.
4. The Defendant further avers that the Plaintiff is in breach of Clause 11(e) of the lease agreement dated 1<sup>st</sup> day of February 2017 and that the suit is hence a non-starter, malicious, vexatious and an abuse of the court process.
  5. In addition to the Amended Statement of Defence, the Defendant has by a Notice of Preliminary Objection dated 29<sup>th</sup> September 2023 sought to have the suit struck out with costs on the grounds that the Plaintiff is in breach of clause 11(e) of the lease agreement dated 1<sup>st</sup> February 2017.
  6. Following directions issued herein, the parties agreed to have the Preliminary Objection disposed of first. I have accordingly perused the submissions placed before me by the parties herein in regard to the said Objection.
  7. By the Preliminary Objection dated 29<sup>th</sup> September 2023, the Defendant asserts that this suit is filed in breach of clause 11(e) of the lease agreement executed between herself and the Plaintiff dated 1<sup>st</sup> February 2017 and that the same is hence a non-starter, malicious, vexatious and an abuse of the court process.
  8. The Lease Agreement between the parties is the first document attached to the Defendant's List of Documents dated 15<sup>th</sup> June 2022 and filed herein on 20<sup>th</sup> June 2022. It is also the first document attached to the Plaintiff's List of Documents dated 11<sup>th</sup> May 2022 as filed herein on 12<sup>th</sup> May 2022. Clause 11 (e) thereof provides as follows:
    - a)...
    - b). That all questions hereafter in dispute between the parties hereto relating to the agreement shall be referred to arbitration in accordance with the provisions of the Arbitration Act (Chapter 49) or other Act or Acts for the time being in force in Kenya in relation to arbitration."
  9. It is the Defendant's submissions that this court has no jurisdiction to hear and determine the dispute herein unless and until the parties have exhausted the arbitration process.
  10. As was stated in Titus Kitonga & Another v Total Kenya Limited & Another [2018] eKLR.

"...the law is settled that an arbitration clause in a contract between the parties is considered independent, separate and severable from the main contract. The doctrine of separability recognizes the arbitration clause in a main contract as a separate contract, independent and distinct from the main contract. The essence of the doctrine is that the validity of an arbitration clause is not bound to that of the main contract and vice versa. Therefore the illegality or termination of the main contract does not affect the jurisdiction of an arbitration tribunal based on an arbitration clause contained in that contract. The obligation to resolve all disputes by arbitration continues even if the main obligation or indeed the contract expires or is vitiated...."
  11. Guided by the said determination, it was evident that even though as the Plaintiff herein states, the lease agreement had expired and the Defendant had since voluntarily moved out of the suit premises, the arbitration clause provided under clause 11 (e) of the Lease Agreement survives the termination and the parties herein have an obligation to adhere thereto.



12. I was not however persuaded that the institution of this suit without first referring the matter to arbitration rendered the suit herein fatally and incurably defective.
13. Accordingly I hereby partially uphold the Preliminary Objection and direct that the suit herein be stayed pending the reference of the dispute to arbitration as required under clause 11 (e) of the Lease Agreement dated 1<sup>st</sup> February 2017.
14. The costs of the Objection shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NYERI THIS WEDNESDAY 3RD DAY OF JULY, 2024.**

**In the presence of:**

**Mr. Gori for the Plaintiff.**

**Mr. Karanja for the Defendant.**

**Court Assistant: Michael**

.....

**J. O. OLOLA**

**JUDGE**

