

## Supreme Court Decision Clarifies Rules for Early Termination of Commercial Leases

Case: *Kwanza Estates Limited v Jomo Kenyatta University of Agriculture and Technology* [2024] KESC 74

### Background

On December 6, 2024, the Supreme Court of Kenya issued a landmark ruling in a case concerning the early termination of a commercial lease. The Tenant, Jomo Kenyatta University of Agriculture and Technology (JKUAT), had attempted to exit a lease agreement with Kwanza Estates Limited (the 'Landlord'), citing the COVID-19 pandemic and shifts in government policy as justifications.

The Landlord challenged this termination, arguing that the lease did not permit early exit. After conflicting decisions by lower courts, the Supreme Court (the 'Court') offered much-needed clarity.

### Key Takeaways

#### 1. Force Majeure vs. Frustration: Clear Distinction

The Court differentiated two legal concepts often invoked in commercial disputes:

- **Force Majeure** must be expressly included in a contract, listing specific disruptive events (e.g. natural disasters, war).
- **Frustration** is a common law doctrine, applied sparingly, and only when unforeseen events make it impossible to fulfill the core purpose of the contract.

In this case, the lease had no force majeure clause, and the Court found that the pandemic did not meet the strict threshold required to establish frustration.

#### 2. "Or Sooner Determination" Is Not a Termination Clause

JKUAT argued that the lease's reference to "or sooner determination" allowed early exit. The Court disagreed, finding this language too vague to serve as a valid termination clause. A valid early termination right must be explicit, unambiguous, and clearly set out in the lease.

#### 3. Tenants Cannot Be Forced to Stay – But Must Pay Damages

While the Court held that a tenant cannot be forced to remain in leased premises, leaving early without a valid basis is a breach of contract. Landlords may claim damages, but they must also take reasonable steps to mitigate their losses, such as seeking a new tenant.

#### 4. Mitigation of Loss Is a Two-Way Street

- Landlords must proactively re-let the property when a tenant vacates.
- Tenants should communicate their financial constraints promptly.

The Court rejected the Landlord's demand for rent covering the entire remaining lease term and limited compensation to three months' rent, emphasizing fairness and commercial reality.

#### 5. Courts Support Contractual Freedom – But With Fairness

The Ruling reflects a judicial approach that protects freedom of contract while promoting fairness and commercial balance. Neither landlord nor tenant can impose their will unreasonably, and courts will not rewrite clear contractual terms.

### Practical Advice for Landlords and Tenants

#### Landlords should:

- a) Include clear termination and force majeure clauses in lease agreements.
- b) Act quickly to re-let vacated premises.
- c) Avoid assumptions that tenants will pay rent for the full lease term if they have already vacated.

### Tenants should:

- a) Review lease terms before attempting early termination.
- b) Document any claims of hardship or impossibility.
- c) Communicate early and in writing.

This Supreme Court ruling underscores the importance of well-drafted lease agreements and a proactive approach to commercial lease disputes. It reminds parties that while courts may sympathize with commercial challenges, they will uphold clear contractual obligations.



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