



**Sagaram v Abenyo (Tribunal Case E020 of 2024)  
[2024] KEBPRT 672 (KLR) (Civ) (24 May 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 672 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E020 OF 2024  
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER  
MAY 24, 2024**

**BETWEEN**

**JAMES SAGARAM ..... TENANT**

**AND**

**JECINTA ABENYO ..... LANDLORD**

**RULING**

**A. Background**

1. Before us is a Notice of Preliminary Objection dated 27<sup>th</sup> February, 2024, which is based on the following grounds; -
  - a. That there does not exist a landlord/tenant relationship between the parties herein subject to the definition under Section 2 of the [Landlord and Tenant \(Shops, Hotels and Catering Establishment\) Act](#) Cap 301 Laws of Kenya.
2. At the court hearing on 29<sup>th</sup> February, 2024, the court directed that the notice of preliminary objection be disposed of by way of written submissions. Both parties complied, with the landlord filing her submissions dated 7<sup>th</sup> March, 2024 and the tenant filing his dated 27<sup>th</sup> March, 2024.
3. The landlord in her submissions contends that the parties herein entered into an agreement dated 1<sup>st</sup> September, 2023 which is annexed to the tenant's application where the tenant was in charge of the bar while the landlord was in charge of the accommodation. That based on the said agreement, no rent was payable by the tenant to the landlord.
4. In addition, the respondent states that the said agreement was for a period of 6 months, from 1<sup>st</sup> September, 2023 to February 2024 which has since lapsed and the said agreement stands terminated.



5. The tenant/applicant on the other hand submits that the parties entered into a tenancy agreement dated 1<sup>st</sup> September, 2023 regarding renting of the suit premises. He states that the tenancy agreement outlined how bills would be paid and how facilities would be shared for the stipulated period of 6 months ending in February, 2024.
6. The tenant also states in his written submissions that on 4<sup>th</sup> February, 2024, the landlord in the company of unknown people stormed into the suit premises, chased the tenant out, locked the premises and confiscated his items.
7. The tenant further adds that he had dutifully and religiously paid bills amounting to KES. 122,906 and equally did major renovations to the suit premises which had been abandoned and in a bad state. The tenant avers that from the context of the said agreement between the parties herein, any payment made by him under the agreement was to suffice as payment of rent.
8. The tenant/applicant avers that the sums he incurred were hefty and that parties agreed that the same be calculated as rent with clear terms on the way forward to be ascertained after 6 months.

## **B. Analysis and Determination**

9. The test of what constitutes a Preliminary objection was settled in the *locus classicus* case of *Mukisa Biscuits Manufacturing Ltd v West End Distributors* [1969] EA 696 wherein it was stated as follows:

“---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 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 a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case, Sir Charles Newbold, P. stated:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

10. In the instant case, we have perused the said agreement between the parties which is dated 1<sup>st</sup> September, 2023. The agreement outlines how the bills and facilities would be shared between the parties and has also dictated the period of the agreement, which is 6 months, ending in February 2024 after which parties would review and agree on the way forward. We find and hold that the said agreement which was entered into between the two parties is not a tenancy agreement.
11. This Tribunal’s jurisdiction is conferred by [Cap 301](#), Laws of Kenya which provides as follows under Section 2 (1) ; -

“controlled tenancy” means a tenancy of a shop, hotel or catering establishment—



(a)	which has not been reduced into writing; or
(b)	which has been reduced into writing and which—
(i)	is for a period not exceeding five years; or
(ii)	contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
(iii)	relates to premises of a class specified under subsection (2) of this section:

12. The Act goes ahead to define a tenant and a landlord as follows;

“tenant” in relation to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding, and includes a sub-tenant;

“landlord”, in relation to a tenancy, means the person for the time being entitled, as between himself and the tenant, to the rents and profits of the premises payable under the terms of the tenancy;

13. The applicant herein has not shown evidence of rent payment to the respondent during the 6-month term of the agreement, and the respondent has denied receiving any rent from the applicant.

14. Even though the tenant avers that the bills he paid amounting to KES. 122,906 under the said agreement was to suffice as payment of rent, the amount paid for bills does not qualify as rent under [Cap 301](#) Laws of Kenya which defines rent as follows; -

“Rent” includes any sum paid as valuable consideration for the occupation of any premises, and any sum paid as rent or hire for the use of furniture or as a service charge where premises are let furnished or where premises are let and furniture therein is hired by the landlord to the tenant or where premises, furnished or unfurnished are let with services;

15. According to the receipts annexed to the applicant’s supporting affidavit dated 19<sup>th</sup> February, 2024, none of the receipts indicate the recipient as the respondent herein.

16. In conclusion, we find that the notice of preliminary objection herein meets the criteria in the case of *Mukisa Biscuits Manufacturing Co. Ltd (supra)* as the fact raised by the respondent is a pure point of law which need not be ascertained. There is no Landlord/ tenant relationship between the parties herein and therefore this Tribunal lacks jurisdiction to hear and determine the matter.

17. For these reasons, we uphold the Notice of preliminary objection with costs and this matter is hereby struck out for want of jurisdiction.



### **C. Orders**

18. In view of the foregoing, the following final orders commend to us; -

- a. The Notice of preliminary Objection dated 27th January, 2024 is hereby upheld.
- b. The application and reference dated 19th February, 2024 are hereby struck out for want of jurisdiction.
- c. Costs of KES. 20,000 are awarded to the respondent.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24th DAY of MAY 2024.**

**HON. JOYCE AKINYI OSODO**

**(PANEL CHAIRPERSON)**

**BUSINESS PREMISES RENT TRIBUNAL**

**HON GAKUHI CHEGE**

**(MEMBER)**

In the presence of:

Ougo for Landlord/respondent

Kiprop for Tenant/applicant

