



**Mudoga & another v Musembi & another (Tribunal Case
E237 of 2024) [2024] KEBPRT 1131 (KLR) (10 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1131 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E237 OF 2024
P KITUR, MEMBER
JUNE 10, 2024**

BETWEEN

JACKLINE ALIVIZA MUDOGA 1ST TENANT

TIMOTHY OBURA MANYANGE 2ND TENANT

AND

EVANS MUSEMBI 1ST RESPONDENT

DAVID MUENDO 2ND RESPONDENT

RULING

1. Before me is a Reference dated 20th February 2024, where the Tenants/ Applicants moved this Tribunal opposing a Landlord's Notice to Terminate or Alter Terms of Tenancy dated 29th January 2024.
2. Parties took directions on the hearing of the Reference on 13th March 2024.
3. The matter was heard on 23rd April 2024, 9th May 2024 and 20th May 2024 when the Tenants called on the 2nd Tenant's testimony, while the 1st Respondent testified on behalf of the Respondents.
4. Before delving into the issues in dispute in this matter, and as is customary before the Tribunal, it is important to satisfy ourselves on the jurisdiction of the Tribunal to handle the dispute before us.
5. In the case of Owners of the Motor Vessel 'Lillian' (s) versus Caltex Oil (Kenya) Ltd [1989] KLR1, the Court stated as follows:

Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.



6. During trial, counsel for the Tenant raised the issue of locus standi, on whether the 1st Respondent is a proper party in these proceedings. On Cross examination, the 1st Respondent indicated that rent payments are made into a bank account held at Co-operative Bank, number 01109005158000 in the joint names of Rose Musembi and Peter Musembi.
7. The 1st Respondent thereafter disclosed that the said Rose Musembi and Peter Musembi are his parents.
8. The existence of a Landlord – Tenant relationship is a prerequisite for the Tribunal to be said to have jurisdiction over a dispute before it and where such relationship does not exist, the provisions of Cap 301 will not apply.
9. In Republic v Chairperson - Business Premises Rent Tribunal at Nairobi & another Ex-Parte Suraj Housing & Properties Limited & 2 others [2016] eKLR, the Judge cited with approval the case of Pritam vs. Ratilal and Another Nairobi HCCC No. 1499 of 1970 [1972] EA 560 where it was stated as follows:

“Therefore the existence of the relationship of landlord and tenant is a pre-requisite to the application of the Act and where such relationship does not exist or it has come to or been brought to an end, the provisions of the Act will not apply. The applicability of the Act is a condition precedent to the exercise of jurisdiction by a Tribunal; otherwise the Tribunal will have no jurisdiction. There must be a controlled tenancy as defined in section 2 to which the provisions of the Act can be made to apply. Outside it, the Tribunal has no jurisdiction.”

10. To establish whether there exists a Landlord – Tenant relationship, we will first consider whether the 1st Respondent is a proper Landlord and whether he had the necessary locus standi to issue the Landlord’s Notice to Terminate or Alter Terms of Tenancy dated 29th January 2024. To this end, Section 2 (1) of Cap 301 defines a Landlord as follows; “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;
11. I have considered the 1st Respondent’s testimony that rent payments by the Tenant are made into a bank account held at Co-operative Bank number 01109005158000 in the joint names of Rose Musembi and Peter Musembi. From the definition of a Landlord under Section 2 of Cap 301, with the said Rose Musembi and Peter Musembi receiving rent payments, the proper party to issue the Landlord’s Notice to Terminate or Alter Terms of Tenancy or any other notice for that matter can only be Rose Musembi or Peter Musembi.
12. The fact that the the Landlord’s Notice to Terminate or Alter Terms of Tenancy dated 29th January 2024 was issued by the 1st Respondent herein who is not a Landlord within the definition of Section 2 of Cap 301 leaves the Tribunal with no other option but a declaration of invalidity.
13. From the above analysis, I therefore proceed to order as follows: -
 - a. The Landlord’s Notice to Terminate or Alter Terms of Tenancy dated 29th January 2024 is hereby dismissed as invalid for issuance by a stranger to the existing Landlord-Tenant relationship.
 - b. The Landlord shall not issue any Tenancy Notice for termination or Alteration of Terms of Tenancy until after the lapse of three calendar months from the date of this Ruling.
 - c. Tenant to continue paying rent as and when it falls due.



- d. Costs are awarded to the Tenant assessed at Kshs. 12,000/= deductible from monthly rent payable.

HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling dated, signed and delivered virtually by Hon P. Kitur this 10th day of June 2024 in the presence of Timothy Manyange the 2nd Tenant and Evans Musembi the 1st Respondent.

HON P. KITUR

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

