



Fredrick Evanzi Gamaliel t/a Fred Motor Works v Mohamed (Tribunal Case E078 of 2023) [2023] KEBPRT 712 (KLR) (2 November 2023) (Ruling)

Neutral citation: [2023] KEBPRT 712 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E078 OF 2023
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
NOVEMBER 2, 2023**

BETWEEN

FREDRICK EVANZI GAMALIEL T/A FRED MOTOR WORKS APPLICANT

AND

SAJAD O. MOHAMED RESPONDENT

RULING

1. The Applicant moved this Tribunal by way of a Complaint dated 30th March 2023 pursuant to Section 12(4) of Cap. 301, Laws of Kenya claiming that the Respondent illegally and unlawfully obstructed the entrance of his business premises by locking both the back door and the main gate with padlocks thereby denying him access thereto in an attempt to evict him.
2. The applicant simultaneously filed a motion of even date seeking reopening of the business premises and exemption from paying rent for the period the premises remained closed. The application is supported by the affidavit of the tenant sworn on 30th March 2023 and the grounds set out on the face thereof.
3. The application is opposed through a notice of preliminary objection dated 24th April 2023 on the grounds that the tenant/applicant is not a protected tenant within the provisions of Section 2 of Cap. 301 and that this Tribunal lacks jurisdiction to hear and determine the application.
4. The Respondent also filed a motion dated 5th June 2023 seeking that the Reference herein be struck out on the grounds set out in the notice of preliminary objection stating that the lease issued to the tenant was for a period of more than 5 years. He annexed a lease dated 1st September 2018 between Nizam Osman and the tenant herein which is for a period of 5 years 1 month as annexure "A" to the supporting affidavit sworn on 5th June 2023.



5. The landlord is said to be a brother to the Respondent herein and it is therefore contended that this Tribunal has no jurisdiction to hear this matter. As such, it is sought that the matter be dismissed for lack of jurisdiction.
6. The matter was directed to be canvassed by way of written submissions and both parties complied. The following issues arise for determination herein:-
 - a. Whether this Tribunal has jurisdiction to hear and determine the Applicant's complaint/reference.
 - b. Whether the Applicant's application dated 30th March 2023 and the reference of even date ought to be allowed or dismissed.
 - c. Whether the Respondent's preliminary objection and application dated 24th April 2023 and 5th June 2023 ought to be allowed or dismissed.
 - d. Who is liable to pay costs?
7. In the case of Pritam – vs- Ratilal & Another (1972) EA 560 at page 562 Madan J (as he then was) stated as follows:-

“As stated in the Act itself, it is an Act of Parliament to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto. The scheme of this special legislation is to provide extra and special protection for tenants. A special class of tenants is created. Therefore the existence of the relationship of landlord and tenant is a prerequisite to the application of the provisions of the Act. Where such a relationship does not exist or it has come 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 the 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”.
8. We have looked at the lease agreement annexed to the Respondent's application dated 30th March 2023 and noted that it is between Nizam Osman as landlord and the applicant as tenant. The Respondent herein is not a party. As such, there is no privity of contract between the two parties herein upon which a cause of action can be founded. No landlord/tenant relationship is disclosed between the parties upon which the applicable statute can be made to operate.
9. Secondly, even if such relationship was to be presumed to apply, the lease agreement is for a period of 5 years 1 month which ousts this Tribunal's jurisdiction by dint of Section 2(1) (a) of Cap. 301 Laws of Kenya which provides that a controlled tenancy should not exceed 5 years. The parties to the said agreement did not certainly intend to operate under the said Act. As such, this Tribunal has no jurisdiction.
10. Consequently, the Applicant's application dated 30th March 2023 and the reference of even date are incompetent and bad in law having been filed in a forum without the requisite jurisdiction and in line with the locus Classicus Case of Owners of Motor Vessel Lillian S”- vs- Caltex Oil (Kenya) Limited (1989 eKLR, we are called upon to down our tools based on the said finding.



11. It therefore follows that the Respondent's preliminary objection dated 24th April 2023 and the application dated 5th June 2023 have merit and are hereby allowed with costs in line with Section 12(1) (k) as read with Section 12(4) of Cap. 301, Laws of Kenya.
12. In the final analysis, the following orders commend to us in this matter:-
 - a. The Applicant's reference and application dated 30th March 2023 are hereby struck out for want of jurisdiction.
 - b. The Respondent's notice of preliminary objection dated 24th April 2023 and the application dated 5th June 2023 are hereby allowed with costs.
 - c. The Respondent's costs are assessed at Kshs.25,000/- against the Applicant.

It is so ordered.

RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 2ND DAY OF NOVEMBER 2023.

HON. GAKUHI CHEGE

PANEL CHAIRPERSON

HON. JOYCE OSODO

MEMBER

BUSINESS PREMISES RENT TRIBUNAL

Ruling delivered in the presence of:-

Hamza for the Landlord

Abeid holding brief for Mwawazi for the Tenant

