



**Jelimo & 2 others v Olet & another (Tribunal Case E614 of 2024)
[2024] KEBPRT 1678 (KLR) (Commercial and Tax) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 1678 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
COMMERCIAL AND TAX
TRIBUNAL CASE E614 OF 2024
N WAHOME, CHAIR & JOYCE MURIGI, MEMBER
OCTOBER 23, 2024**

BETWEEN

NAOMI JELIMO 1ST APPLICANT

RICHARD KIBET KIPLIMO 2ND APPLICANT

MELADEN CITY LOUNGE LIMITED 3RD APPLICANT

AND

PAMELA OLET 1ST RESPONDENT

MELAMANI LIMITED 2ND RESPONDENT

RULING

1. This Ruling is on the Tenant/Applicants application dated the 28th May 2024 and on the Landlord's Notice of Preliminary objection dated the 25th June 2024. The application sought for orders of mandamus compelling the landlord to release to the Tenant all the items and business properties on L.R No. Nairobi Block 209/10350 otherwise known as Meladen Bar & Restaurant.
2. The Applicants also sought for an order of injunction to restrain the Respondents from harassing them or interfering with the quiet possession of the demised premises aforesaid. The reference by the Tenant and also dated 28th May 2024 replicated the prayers in the notice of motion of even date dated 28th May 2024 replicated the prayers in the notice of motion of even date but also sought damages at Kshs.5,000,000/-.
3. In their notice of preliminary objection, the respondents questioned the jurisdiction of this Tribunal to preside over this matter and further challenged all the filings by the Applicants/Tenants on the allegation that there were no resolutions by the 3rd Tenant allowing the filing of this suit nor appointing the firm of M/S Aringa & Co. Advocates to Act for it.



4. We have looked at the parties filings and are of the view that this matter turns on only one issue. That is the question of this Tribunal's jurisdiction to adjudicate over the matters at hand. This jurisdiction is donated by Section 2(1) of the Landlord and Tenant(Shops, Hotels and Catering Establishments) Act (cap 301) hereinafter "the Act" and the existence of a Landlord and Tenant relationship.
5. The Landlord has belaboured on the legitimacy of the 3rd Tenant to commence these proceedings, the instructions on M/S Aringa & Co. Advocates to represent the 3rd Tenant and on the legitimacy of the Tenants filings. In our view, those contentions have been effectively settled by the Tenants Replying Affidavit sworn by M/S Naomi Jelimo on the 30th August 2024 and in particular annexure NJ-2 thereof.
6. In any event, it is now trite that the lack of a resolution of a limited liability company before the commencement of legal proceedings can never have any fatal effect thereof. On the issue, justice J.. Mutunga in the case of RAYMARK Limited – vs- John Lokorio ELC case No. 147 of 2019 (2021) eKLR had this to say:-

“The significance of a board resolution authorizing the filing of a suit by a corporate entity is to ensure that they do not have unauthorized persons instituting suits on behalf of companies in respect of which the companies may have no knowledge about yet when liabilities ensue they would be expected to shoulder the same. The resolution by the plaintiff though filed after the preliminary objection was taken is properly on record as it was filed before the suit was set down for hearing. The preliminary objection is not sustainable and I dismiss the same with costs to the Plaintiff”.

7. Therefore in our view, this suit will fall or rise on the answer to the question whether the Applicants have satisfied Section 2(1) of the Act in coming to this court. More importantly, whether there exists a landlord and Tenant relationship between the parties when looked against the totality of the materials placed before us.
8. We appreciate that the Tenants in their application have asked to be allowed to remove their properties from the demised premises. That is an admission that they do not have access to the premises. The inspector of this court by his report has confirmed that there is a business running at the demised premises and that the same is not being run by the Tenants.
9. From the report, it can be deduced that the Respondents are in possession of the demised premises and that they are running a similar business to that operated by the Tenants. Sadly, it seems that the landlord's are running the business by use of the Tenants tools and equipment.
10. It is however not lost on us that the Tenants allege to have been evicted from the demised premises in November, 2023 and only moved this court barely 3 days shy of the month of June, 2024. No explanation was offered for such lethargy and the interventions of this court which could have effectively been employed was rendered moot.
11. The Tenants have by their evidence conceded the premises. They have not sought for reinstatement thereof. Without being in possession and not having sought for reinstatement into the demised premises the prayer for injunction is rendered in vain and of no consequence if issued. In plain language we are saying that there does not seem to exist a landlord and Tenant relationship in this matter.
12. Without such a relationship, then this court is rendered without jurisdiction. It deeply saddens us that we are unable to make any affirmative orders despite our empathy to the Tenants. Without jurisdiction,



we are unable to make such orders as the release of the Tenants tools, goods and generally their properties and also determine compensation for the prima facie illegal eviction of the Tenants.

13. On the question of the requirement of a landlord and Tenant relationship as the foundation of this court's jurisdiction we find reliance from the case of Pritam – Vs- Ratilal & Another (1972) EA 560 the court of Appeal held that:-

“Therefore the existence of the relationship of Landlord and Tenant is a pre-requisite to the application of the provisions of the Act. Where such a 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 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”.

14. In view of the above, it then follows that we cannot take any step or steps or make any move towards resolution of the matters herein as the same belong to another province. In this we rely on the locus Classicus case of Owners of the Motor Vessel “Lilians” – vs- Clatex Oil (Kenya) Ltd Civil Appeal no. 50 of 1989 (1989) eKLR the Court of Appeal held that:-

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”.

15. Flowing from the above, it is our determination that we are prohibited from taking any further step in these proceedings and that we are indeed commanded by the law to down our tools to that end.
16. On the question of costs, it is our view that this is one exceptional case where each party should bear own costs. it would be the ultimate oppression to award costs to the Landlord who is the successful party in this matter in view of all the underlying issues.
17. In the final analysis, the orders that commend to us are the following:-
- i. That the notice of preliminary objection dated 25/6/2024 is upheld and as a consequence thereof the reference and the notice of motion application dated 28/5/2024 are struck out.
 - ii That each party shall bear own costs of these proceedings.

Those are the orders of the court.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF OCTOBER, 2024.

HON. NDEGWA WAHOME MBS - PANEL CHAIRPERSON

HON. JOYCE MURIGI - MEMBER

BUSINESS PREMISES RENT TRIBUNAL BPRT

Ruling delivered in the presence of Mr. Wakiaga for the Respondent/Landlord and Mr. Aringa for the Tenant/Applicant.

