



**Maina v Guantai (Tribunal Case E1217 of 2023)  
[2024] KEBPRT 829 (KLR) (5 June 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 829 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE E1217 OF 2023  
A MUMA, MEMBER  
JUNE 5, 2024**

**BETWEEN**

**JULIUS MAINA ..... TENANT**

**AND**

**GODFREY GUANTAI ..... LANDLORD**

**RULING**

**PARTIES AND THEIR REPRESENTATIVES**

1. The Applicant, Julius Maina, occupies the suit premises (“the Tenant”).
2. The firm of Mugeria, Lempaa & Kariuki Advocates represents the Tenant in this matter.
3. The Respondent, Godfrey Guantai is the proprietor of the suit premises Room/Hall 1<sup>st</sup> Floor Hall located at Sabe House Githurai (“the Landlord”).
4. The firm of Gatoto & Associates Advocates represents the Landlord in this matter.

**DISPUTE BACKGROUND**

5. The Tenant moved this Honorable Tribunal vide a Reference and Application evenly dated 20<sup>th</sup> November 2023. The Tenant sought, inter alia, the following from this Honorable Tribunal:
  - I. To issue an order of injunction against the Landlord, his agents or anyone claiming on his behalf, be restrained from evicting or interfering with the Tenant’s peaceful occupation granted.
  - II. To issue an order that the Landlord’s Notice to terminate dated 25<sup>th</sup> October 2023 is declared invalid and is struck out.



6. Having considered the Tenant's Application, the Tribunal via an Order dated 6<sup>th</sup> December 2023 ordered, among other orders, that:
  - I. Pending the interpartes hearing of the Application, an injunction is issued restraining the Landlord, his agents or anyone claiming on his behalf from evicting or interfering with the Tenant's peaceful occupation.
  - II. The O.C.S of Mwiki Police Station ensures compliance with the Orders.
7. Subsequently, the Landlord filed a Notice of Preliminary Objection dated 4<sup>th</sup> March 2024 challenging the jurisdiction of this Honourable Tribunal.
8. Consequently, the Tribunal via an Order dated 3<sup>rd</sup> April 2024 dismissed the matter for want of jurisdiction and awarded costs to the Landlord.
9. The Tenant, in response to the Orders dated 3<sup>rd</sup> April 2024 filed an Application dated 8<sup>th</sup> April 2024 seeking, among other orders, that the Tribunal be pleased to set aside the orders striking out the suit on 3<sup>rd</sup> April 2024 on account of lack of jurisdiction.
10. Further, the Tenant filed his written submissions dated 8<sup>th</sup> May 2024 in opposition to the Landlord's Notice of Preliminary Objection dated 4<sup>th</sup> March 2024.

#### **TENANT'S CLAIM**

11. The Tenant avers that he has been a Tenant since 1<sup>st</sup> July 2023.
12. He further avers that he presented an Agreement dated 1<sup>st</sup> July 2023 and the tenancy established is controlled in the said Agreement.
13. Despite diligently meeting his obligations, including the payment of a monthly rent of Kshs.50,000, he received a notice of termination dated 25<sup>th</sup> October 2023, which he asserts does not conform to the prescribed form and procedures.
14. Furthermore, the Tenant states that he has obtained the required licenses for operating a Bar and Restaurant, selling alcoholic drinks, issued by the County Government of Kiambu after a thorough assessment of the business premises and the surrounding environment for the previous and current year.
15. He further stated that the entire building is solely a business premises, housing various enterprises such as a Bar and Restaurant, an Agroveter Business, and a bookshop, contrary to the Landlord's claim that it is solely a residential premises.
16. The Tenant also avers that the Landlord continuously interferes with his peaceful enjoyment of the premises by switching off the power, leading to substantial financial losses estimated at Kshs. 100,000 monthly due to the adverse impact on his business operations.

#### **LANDLORD'S DEFENCE**

17. The Landlord avers that this Honourable Tribunal lacks jurisdiction on the basis that the matter involves residential premises and that the term of the Rental Agreement dated 23<sup>rd</sup> June 2023 is above 5 years.



## ISSUES FOR DETERMINATION

18. Having carefully perused all the pleadings and evidence presented before this Honorable Tribunal by the parties, it is therefore my respectful finding that the sole issue for determination is:

Whether this Honourable Tribunal has jurisdiction to hear and determine this matter?

## F. ANALYSIS AND FINDINGS

Whether this Honourable Tribunal has jurisdiction to hear and determine this matter?

19. It goes without saying that this Honourable Tribunal cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law or legislation. The issue of jurisdiction is not a mere technicality but that which goes to the root or heart of the matter.
20. Jurisdiction is everything and without it a court has no power to make any step. This was stated in the classic case of *The Owners of the Motor Vessel "Lillian S" Vs Caltex Oil (Kenya) Ltd* (1989) KLR 1 where Nyarangi J.A. held as follows:

'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. Jurisdiction is everything. Without 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 downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.'

21. A court's jurisdiction flows from either *the Constitution* or legislation or both. The Supreme Court of Kenya in the case of *Samuel Kamau Macharia Vs KCB & 2 Others*, Civil Application No. 2 of 2011 stated thus:

"A Court's jurisdiction flows from either *the Constitution* or Legislation or both. Thus, a Court of Law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by Law"

22. This Honourable Tribunal draws its jurisdiction from the Landlord and Tenants (Hotels, Shops and Catering Establishments) Act Cap 301 ("the Act").
23. Additionally, the jurisdiction of this Tribunal was aptly discussed in the case of *Republic vs Business Premises Rent Tribunal & Another Ex- Parte Albert Kigera Karume* [2015] eKLR which cited with approval the case of *Re Hebtulla Properties Ltd.* [1979] KLR 96; [1976-80] 1 KLR 1195 where the Court dealt with the provisions of section 12 of Cap 301 and stated as follows:

"The Tribunal is a creature of statute and derives its powers from the statute that creates it. Its jurisdiction being limited by statute it can only do those things, which the statute has empowered it to do since its powers are expressed and cannot be implied. The powers of the Tribunal are contained in section 12(1) of the Act and anything not spelled out to be done by the Tribunal is outside its area of jurisdiction. It has no jurisdiction except for the additional matters listed under section 12(1)(a) to (n). The Act was passed so as to protect tenants of certain premises from eviction and exploitation by the landlords and with that in mind the area of jurisdiction of the Tribunal is to hear and determine references made to it under section 6 of the Act. Section 9 of the Act does not give any powers to the Tribunal, but



merely states what the Tribunal may do within its area of jurisdiction. It would be erroneous to think that section 12(4) confers on the Tribunal any extra jurisdiction to that given by and under the Act elsewhere. Section 12(4) of the Act must be read together with the rest of the Act and, when this is done it becomes apparent that the complaint must be about a matter the Tribunal has jurisdiction to deal with under the Act and that is why the complaint has to relate to a controlled tenancy. The Act uses the words “any complaint” and the only qualification is that it must be “relating to a controlled tenancy”.

24. In the present case, the Landlord contends that this Honourable Tribunal lacks jurisdiction to entertain this matter on two grounds. Firstly, it is on the basis that the matter involves residential premises and secondly, it is that the term of the Rental Agreement dated 23rd June 2023 is above 5 years.
  - a. On the basis that the term of the Rental Agreement dated 23rd June 2023 is above 5 years.
25. In the present case, the Landlord contends that the matter is not a controlled tenancy and as such it falls outside the ambit of this Honourable Tribunal.
26. A controlled tenancy is defined under section 2(1) (a) of the Act as follows:
  - a. Which has not been reduced into writing; or
  - b. Which has been reduced to 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;
27. Clause 3 of the Rental Agreement dated 23rd June 2023 states:

“This Agreement is to begin on the 1<sup>st</sup> day of July 2023 and ends on the 30<sup>th</sup> day of June 2028...”
28. Upon reviewing the clause, the period between 1st July 2023 and 30th June 2028 is 5 years and as such it is this Tribunal’s contention that the specified period falls within the ambit of Section 2(b)(i) of the Act.
  - b) On the basis that the matter involves residential premises
29. As afore cited above, The Business Premises is a creature of the Landlord and Tenants (Hotels, Shops and Catering Establishments) Act Cap 301. Further, the preamble to the Act provides that 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.”
30. The Tribunal's jurisdiction is limited to premises classified as a hotel, catering establishment, and shop.
31. The Tenant, in this instance, runs a Bar and Restaurant, selling alcoholic drinks. He has presented ample evidence to the Tribunal, including a valid license from the County Government of Kiambu for 2023, permitting him to operate a Bar and Restaurant selling alcoholic drinks.



32. However, the license acquired is between him and the County Government of Kiambu and not him and the Landlord.
33. Despite the Tenant asserting that the property owned by the Landlord is solely a business premise and not residential he has failed to furnish any evidence of the same in form of pictures, video or oral testimony of neighbouring businesses it remains his word against the Landlords.
34. According to Section 107 of the Evidence Act, Cap. 80 of the Laws of Kenya, the burden of proof lies with the party asserting the existence of specific facts necessary to establish their legal rights or liabilities. As such the Tenant has failed to provide any evidence disputing the Landlord's claim that the premises is a residential premise.
35. Additionally, upon examination of the Rental Agreement dated 23rd June 2023, it has come to the Tribunal's attention that the wording of the Agreement relates to residential premises and not commercial premises specified under the Act.
36. As aforementioned, the jurisdiction of this Tribunal is limited by the Act and hence it can only do those things, which the statute has empowered it to do since its powers are expressed and cannot be implied.
37. The powers of the Tribunal are contained in section 12(1) of the Act and anything not spelled out to be done by the Tribunal is outside its area of jurisdiction.
38. Clauses 1,2 and 11 of the Rental Agreement dated 23rd June 2023 describe the premises to be that of residential.
39. The descriptive clause of the Rental Agreement dated 23rd June 2023, clause 1, states that:
- “The lessor will rent to the lessee and the lessee will rent from the lessor the following residential premises”
40. The clauses describe the premises as a residential and not a hotel or a shop.
41. It is the Tribunal's contention that the parties entered into the Agreement which terms were specific to residential premises willingly since no claim has been brought contrary to the same and as such this Honourable Tribunal has no business rewriting the contract for the parties as was held in the case of Housing Finance Company of Kenya Ltd v Njuguna KLR 1176(CCK) that:
- “courts shall not be the fora where parties indulging in varying terms of their agreements with others will get sanction to enforce the varied contracts. Contracts belong to parties and they are at liberty to negotiate and even vary the terms as and when they are at liberty to negotiate and even vary the terms as and when they choose. This they must do together with the meeting of the minds. If it appears to a court that one party varied the terms of a contract with another, without the knowledge, consent or otherwise of the other, and the other demonstrates that the contract did not permit such variation, this court will say no to the enforcement of such a contract.”
42. Additionally, the Tenant has not provided this Honourable Tribunal with any approval for a change of user to signify the change of user of the premises from residential to commercial premises.
43. In light of the foregoing, despite the tenancy being that of a controlled tenancy, it is this Honourable Tribunal's contention that it lacks jurisdiction to entertain the matter at hand.



## **ORDERS**

44. In the upshot, the Tenant's Reference and Application dated 20<sup>th</sup> November 2023 is hereby dismissed with no orders as to costs.

**HON A. MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**RULING DATED, DELIVERED AND SIGNED AT NAIROBI ON THIS 5<sup>TH</sup> DAY OF JUNE 2024  
IN THE PRESENCE OF NJENGA HOLDING FOR HAKIM FOR THE TENANT/APPLICANT  
AND GATOTO FOR THE RESPONDENT/LANDLORD.**

**HON A. MUMA**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

